TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~250.~~ 15

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM, APPELLANTS,

vs.

JOHN H. KELLOM, HARRISON JOHNSON, JAMES G. CHAPMAN, AND GEORGE VAIL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED DECEMBER 8, 1870.

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vs.

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1 Pleas before the Honorable John F. Dillon, judge of the circuit court of the United States within and for the eighth judicial circuit and district of Nebraska, and the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court aforesaid at the term of May, A. D. 1870.

In chancery.

To the honorable the judge of the district court of the Territory of Nebraska, for the first judicial district and county of Douglas:

Humbly complaining, show unto your honor, your orators, James S. Easley and William W. Willingham, both of the State of Virginia, that Harrison Johnson, of the said county of Douglas, having occasion for a sum of money on or about the twenty-fifth day of June, in the year one thousand eight hundred and fifty-seven, applied unto your orators to advance and lend him the sum of five thousand and six hundred dollars, and having then, recently, under and by virtue of an act of the Congress of the United Sates, entitled "An act to appropriate
2 the proceeds of the sales of the public lands and to grant preëmption rights," approved September 4, 1841, purchased from the United States certain premises situate in the said county of Douglas, known and described as follows, that is to say: The northeast quarter of the southeast quarter and the southeast quarter of the northeast quarter of section numbered twenty-one, (21,) and the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of section number *number* twenty-two, (22,) in township number fifteen, (15,) north of range number thirteen, east of the sixth principal meridian, proposed, in order to secure the payment of said sum of money to convey to such person as your orators should for that purpose appoint, a portion of said premises, namely, the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter, in the section number twenty-one aforesaid.

And your orators further show unto your honor that they accordingly complied with the said request of said Johnson, and on said day advanced to him the said sum of five thousand and six hundred dollars.
3 Whereupon, in order to secure the repayment thereof to your orators, he made and delivered to your orators his certain promissory note in writing, bearing date on or about the aforesaid day, whereby, for value received, he promised, twelve months after date thereof, to pay to the order of your orators the said sum of five thousand six hundred dollars; and also together with Minerva, his wife, by his deed duly made, executed, acknowledged, and afterwards recorded in the office of the register of deeds of said county, conveyed to James D. Test, who was for that purpose appointed by your orators, the premises last above described, therein and thereby covenating and agreeing to and with the said Test that they were seized lawfully of said premises, and also that the said premises were free from all incumbrance; and also that they would warrant and defend the said premises against the lawful claims of all persons whomsoever.

And your orators further show unto your honor that the said note, by its terms, having become due and payable, and the said Johnson having made default in the payment thereof, the same was, on or about the ninth day of July, one thousand eight hundred and fifty-eight, by your orators, renewed, and payment extended for the further time of one year; whereupon, in consideration thereof, and a further forbearance by your

4 orators to him of the said debt, he, the said Johnson, made and delivered to your orators his certain other promissory note in writing, bearing date at Omaha, in the said county of Douglas, on said day, whereby, for value received, he promised, twelve months after said day, to pay to the order of your orators the sum of six thousand and eight hundred and twenty-one dollars, with interest after maturity at the rate of thirty per cent. per annum, it being expressly understood and agreed by and between the said Johnson and your orators that the said premises should stand and remain as security for the repayment of the said note; that said Test has, by his deed duly made, executed, and acknowledged, conveyed said premises to your orator Willingham.

And your orators further show unto your honor that no part of said note has ever been paid or collected, nor have any proceedings been had at law for the recovery thereof; but the whole thereof, with a considerable arrear of interest, remains due thereon and owing to your orators.

And your orators further show unto your honor that very shortly after the making of the first above-mentioned note and deed the said
5 *the said* Johnson conveyed the remaining portion of the first above-described premises to some person or party unknown to your orators, by way of mortgage, to secure the payment of a sum equal to the full value of the premises so by him mortgaged, and that at or about the same time large judgments were recovered against him in this honorable court, which became and were liens on the premises first above described, subject to the lien and incumbrance of the aforesaid charges in favor of your orators and the other parties aforesaid thereon; and he became, and was, and still is, hopelessly insolvent, without the means of paying your orators' aforesaid debt.

And your orators further show unto your honor that, shortly after the time the said Johnson so as aforesaid preëmpted the premises first above described, some evil-disposed person or party, to your orators unknown, exhibited in the Land Department of the Government a caveat against said preëmption, alleging some frivolous and false reasons therefor; that such proceedings were in said Department had thereon; that the said Johnson's right to preëmpt said land was about to be sustained, and said caveat dismissed out of the said Department by the proper
6 officer or officers thereof, when the said Johnson and divers of his judgment creditors aforesaid, for the purpose of depriving your orators of their lien and charge upon said premises held by them under and by virtue of the aforesaid note and conveyance made by said Johnson, as is above set forth, and of holding the said premises to their use, free and divested thereof, entered into some conspiracy, the exact nature whereof is to your orators unknown, save that it was then and there by and between them, the said Johnson and his aforesaid creditors, agreed that the said Johnson should withdraw his opposition to the proceedings aforesaid then had and pending undetermined in said Land Department; should procure his said preëmption to be vacated and set aside, and the said premises restored to the body of the public lands; should further procure and order to be made by the said Department directing said premises to be sold at public auction by the officers of the Land Office of the United States for the Omaha land district, that being the district in which said premises were situate as public lands of the Government; should at such sale, and by such means as the occasion should require, hinder and prevent all others from purchasing or bidding for said premises, and themselves and none of them should compete
7 together in bidding upon said premises at said sale; but notwithstanding said premises were of the value of at least twenty-five

dollars per acre, would bid the same in at the minimum price fixed for the Government for that purpose, namely, one dollar and twenty-five cents per acre, and in a manner and in proportions unknown to your orators, would divide said premises so by them to be purchased among them, and that the said judgment creditors would release and discharge their several debts, liens, judgments, and securities by them held against him and property.

And your orator further shows unto your honor that, in pursuance of such their agreement, the said Johnson did withdraw his opposition in the aforesaid Land Department to the said proceedings to vacate his said entry, by reason whereof his said entry of said lands was vacated and set aside, and the said lands were by the proper officer of the Government ordered to be, and the same were, advertised to be sold at public auction at the land office, in the said city of Omaha, on the eighteenth day of August, one thousand eight hundred and sixty; that shortly, prior to the time so fixed for said sale, the said Johnson and divers of his friends acting on his behalf, and at his instance, industriously
8 circulated throughout said city of Omaha the report that said premises were to be bid in at said sale for his benefit, in order to preserve to him and his family his homestead and the improvements made at great expense by him on said premises, and to pay off and satisfy his debts which were heavily pressing upon him; that, in order by intimidation and threats to prevent all others from bidding for said premises at said sale, the said Johnson and divers persons who were acting for and on behalf of him attended said sale in a body, and did hinder and prevent (by threats of violence to all persons bidding at said sale) from bidding at said sale others who proposed to, and otherwise would have bidden at said sale.

And your orators further show unto your honor that, on the day before and on the morning of the day so as aforesaid by the said officers of the Government fixed and advertised for said sale, the said Johnson entered into an agreement in writing with certain of his creditors of the purport and to the effect that he should without competition be permitted to, and should bid off and purchase at the minimum price allowed by law in that behalf at said sale one-half of said lands; that is to say,

9 and hold the same discharged of all claims of his creditors thereon and that John H. Kellom should bid off and purchase at said sale without competition, and at the minimum price allowed by law in that behalf the other one-half of said lands; that is to say,

; that three persons mentioned in said agreement, whose names are unknown to your orators, should act as an arbitrating committee to determine the validity of debts of such creditors as should come in under said agreement, and the amount thereof taken at the original consideration, with interest at ten per cent. per annum, and to divide the last-mentioned lands among said creditors debts, assigning to each a part of said lands proportioned to the amount thereof, and if any creditor did not come in and take under said agreement, and discharge his debt, that the portion of said lands falling to his debt should be conveyed to said Johnson by said Kellom, and said Johnson, in consideration thereof, should relinquish all claims on his part, and by reason of his aforesaid entry of said lands to the parcels of said lands, to be so as aforesaid conveyed to such of said creditors as should come in and take under said agreement,
10 And your orators further show unto your honor that said Johnson did bid in the aforesaid part of said premises which in

and by the agreement aforesaid it was stipulated he should purchase at the minimum price, no one bidding or attempting or offering to bid thereon against him, and that John H. Kellom, of said county of Douglas, in his own name, but in fact in trust for said creditors and said Johnson, and under and in pursuance of said agreement bid in the remaining portion of said premises, the said Johnson neither bidding, nor attempting, nor offering to bid thereon against him, the said Kellom; that thereupon they, the said Kellom and the said Johnson each paid to the officers of the aforesaid land office the sum so as aforesaid respectively bidden for said premises, and the said officers issued to them respectively the usual patent certificates for the said premises, and that recently and at a day unknown to your orators, the usual letters-patent of the United States, conveying to them the fee of said lands have been issued to them respectively, and thereupon and in consideration and in pursuance of said agreement said Johnson relin-
11 quished all claims to the lands purchased by said Kellom.

And your orators further show unto your honor that creditors of said Johnson, holding debts against him to the amount of only one-half of his entire indebtedness, came in under said agreement, and he has required, and still does require, said Kellom to convey to him such parts of said lands as under said agreement would have fallen to such of his creditors as declined to come in under the same had they claimed the benefit thereof; yet the said Kellom has utterly refused and still does refuse so to do, although the debts of said creditors were submitted to said committee mentioned in said agreement, and the amount thereof duly adjusted and the validity and amount thereof well known to, and acknowledged by the said creditors who made, and those thereof who came in under said agreement.

And your orators further show unto your honor that the aforesaid certificate, so as aforesaid issued to said Johnson, and also the said letters-patent, were made to and in the name of his mother Sarah A. Johnson, of said county of Douglas, but your orators charge and aver that the said Harrison Johnson paid for the premises therein described
12 from his own means; that ever since the day of the date thereof respectively, he has in the same manner in all respects, as he did before, lived upon, cultivated, claimed to own, dealt with and used said premises as his own; that he has maintained and supported his said mother, Sarah A., a portion of the time at his house on said premises and a portion of the time on other lands in which he had an interest, wherefore your orators charge and insist that said premises were in fact sold to him and the title thereto taken in the name of the said Sarah A. in order to protect the same from your orators' aforesaid charge and lien.

And your orators further show unto your honor that George Vail, James G. Chapman, and the said Kellom, do claim to own portions of the premises so as aforesaid conveyed to the aforesaid Test, in trust for your orators; that they do so claim said portions of said premises by virtue of divers conveyances made by said Kellom in that behalf, but at the several times at which they respectively acquired their said interests they had full notice of all the matters and things hereinbefore stated and charged.

The matters and things hereinbefore stated are charged by your orators on information derived from divers persons, and they believe the same to be true.

13 And your orators further show unto your honor that they have frequently applied to said Johnson and in a friendly manner

requested him to pay the aforesaid sum of money due to them, and they well hoped he would have complied with such their reasonable request or that he and the said Sarah A. Johnson, John H. Kellom, George Vail, and James G. Chapman would have applied said premises to that purpose, as in equity and good conscience they ought to have done.

But now so it is, may it please your honor, the said Harrison Johnson, and Minerva his wife, Sarah A. Johnson, John H. Kellom, George Vail, and James G. Chapman, colluding and confederating with each other, refuse to comply with such request. In consideration whereof, and forasmuch as your orators are without adequate remedy save in this honorable court, to the end therefore that the said defendants may answer this bill of your orators, (but not under oath, their answer under oath being expressly waived,) and that it be by the decree of your honor declared that the said defendants and each and every of them hold the premises so as aforesaid conveyed to your orators subject to the lien and charge of the aforesaid demand of your orators thereon; that it be
14 decreed that said premises be sold and the proceeds arising on said sale be applied to the payment of the said demand, both principal and interest, and that the said defendants, and each and every of them, be foreclosed of and from all equity of redemption in said premises, and that your orators may have all such other and further relief as the circumsta'ce of this case require and to your honor shall seem to be equitable—

May it please your honor to grant unto your orators the usual writ of subpœna to be directed to the said Harrison Johnson, and Minerva his wife, Sarah A. Johnson, John H. Kellom, George Vail, and James G. Chapman, commanding them and each of them to be and appear in this honorable court at a day therein to be named, then and there to answer the premises and abide your honor's decree herein.

And your orators will ever pray, etc.

JAMES M. WOOLWORTH,
Solicitor, and of Counsel for Complainant.

On which said papers appear the following endorsements, in words and figures following, to wit:

No. 55. In chancery. James S. Easly et al. vs. Harrison, Johnson et al. Bill. J. M. Woolworth, sol. for compl'ts. Filed Nov. 2, 1866. W. Kellogg, jr., clerk. Filed July 3d, 1867. E. B. Chandler, clerk.

15 And thereupon, afterwards, to wit, on the 3d day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

In chancery. In the district court of the first judicial district of the Territory of Nebraska, for the county of Douglas.

The joint and several answer of John H. Kellom and James G. Chapman, two of the defendants, to the bill of complaint of James S. Easley and William W. Willingham, complainants.

These defendants, now and at all times hereafter, saving and reserving to themselves and to each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them

or either of them to make answer unto, they, these defendants,
16 severally answering, say that they, these defendants, severally denies each and every allegation and charges in the said complainant's said bill contained, except such as shall hereafter, in this answer, be especially admitted.

And these defendants, further severally answering, deny that defendant Harrison Johnson applied to the said complainants or either of them to borrow the sum of money in said bill mentioned, or any other sum of money, as alleged and charged in the said bill; or that the said defendant Harrison Johnson executed a conveyance of the premises and lands described in said bill to said complainants, or to any other person in trust for, or for the benefit of, said complainants, as is alleged and charged in said bill of complaint; and the defendants severally say they are informed and believe it to be true that, about the date mentioned in said bill, said defendant Harrison Johnson, obtained from one James D. Test the money mentioned in said bill, and gave said Test his promissory note therefor, and that, when said note became due, the said Johnson fully paid the same, and the same then was surrendered up to said defendant Johnson.

And these defendants severally deny that said James D. Test was appointed by said complainants to receive a conveyance from
17 said defendant Johnson, or that said defendant Johnson executed and delivered any second note to said Test or said complainants, or that there was any forbearance on part said complainants towards said defendant Johnson for any paper, or that there was any understanding or agreement between said defendant Johnson and said complainants that the premises or any part thereof described in said bill should stand and remain as security for the payment of a note as charged and alleged in said bill; and these defendants are informed and believe it to be true, and charge the truth to be, that said complainants have been and are officers in the rebel army, (so called,) in the State of Virginia, and have been for the past four years in open hostility against the Government of the United States.

And these defendants, further severally answering, deny that said defendant Harrison Johnson is or was indebted to said complainants as alleged and charged in said bill; and these defendants severally say that they or either of them, to the knowledge or belief of the other do not know and have never been informed, save by said complainants' bill, and cannot set forth as their belief, or otherwise, whether said defendant Johnson conveyed, by way of mortgage, the premises
18 or any part thereof, or whether there were large judgments against the said defendant Johnson, or whether said Johnson is insolvent as alleged and charged in said bill, and therefore deny the same; and these defendants severally deny that the said defendant Johnson was or is hopelessly insolvent.

And these defendants, further severally answering, say that they are informed, and believe it to be true, that said defendant, Harrison Johnson did, about the time alleged in said bill of said complainants, file upon and claim the lands described in said bill under the act of Congress of eighteen hundred and fifty-one, and that the said defendant Johnson afterwards preëmpted the said premises. But these defendants severally deny that the preëmption so made by said defendant Johnson was bona fide; and these defendants severally say that they are informed and believe it to be true, and charge the truth to be, that the said defendant Johnson fraudulently preëmpted said premises, and for the sole purpose of speculation; and that, in order to carry out the fraudulent purposes afore-

said, he, the said defendant Johnson, before preëmpting said lands did, by deed of conveyance, sell and convey portions of said land to divers persons in fraud of the said act of Congress aforesaid; and these
19 defendants severally admit that some time after the said defendant Johnson had so preëmpted said lands as aforesaid, a caveat was filed in the Land Department of the United States, to vacate and set aside said preëmption so made as aforesaid by said defendant Johnson; but these defendants severally deny that said caveat was exhibited in the Land Department by some evil-disposed person or party, or that the same alleged some frivolous or false reasons therefor, or that such proceedings were in said Department had thereon that the said Johnson's right to preëmpt said land was about to be sustained, and said caveat dismissed out of said Department by the proper officer thereof; or that the said Johnson, and divers of his judgment creditors, for the purpose of depriving the said complainants or other persons of any rights, entered into a conspiracy, as alleged in said bill, or that it was agreed that the said Johnson should withdraw his opposition to the proceedings on said caveat; or that said Johnson should procure said preëmption so made by him as aforesaid to be vacated and set aside, and the said premises restored to the body of the public lands, or should procure the said lands to be sold at public auction, as alleged in said bill; and these defendants severally deny the alleged agreement in said bill
20 alleged, to hinder and prevent persons from purchasing or bidding for said premises, or in competing in bidding upon said premises, or that the said premises were to be divided in certain proportions between said Johnson and his judgment creditors; or that his, said Johnson's, judgment creditors were to release and discharge their several debts held against him; and these defendants are severally informed, and believe it to be, and charge the truth to be, that said caveat aforesaid, and the proofs offered in evidence before the said United States Land Department, in the proceedings upon said caveat did sufficiently and amply show that the said preëmption of the lands aforesaid so made as aforesaid by the said defendant Johnson, was fraudulent—for the purposes of speculation and in fraud of the act of Congress aforesaid; and that the said preëmption was so fraudulently made by the said defendant Johnson; and further that the said land was and is within the corporate limits of the city of Omaha, and not subject to preëmption under the said act of Congress aforesaid, and that the city of Omaha, in good faith filed said caveat, and conducted all the proceedings therein before the said Land Department to a
21 final decision in the said Land Department, before the proper officers thereof; and that said final decision of the said preëmption of said defendant Johnson, so made by him as aforesaid, was declared null and void, vacated and set aside, and the said land was restored to the body of the public lands in order that the same might be sold by the Government at public auction; and these defendants say they are further informed, and believe it to be true, and charge the truth to be, that the said defendant Johnson, in the caveat and proceedings in the said Land Department, defended his said preëmption of the said land aforesaid against the said caveat and proofs offered in the matter, and spent large sums of money in his said defence, throughout all the proceedings, to the final decision in the matter; and that there was a fair and full hearing of the parties litigant, to wit, the said city of Omaha prosecuting, and the said defendant Johnson defending, before the said Land Department; and these defendants are advised that the said caveat, proofs, and matters so litigated, prosecuted, and defended by the par-

ties aforesaid, to wit, the city of Omaha, and said Johnson, are matters which properly and exclusively belong to the said Land Department for adjudication and final decision, and therefore submit to this
22 honorable court, as part of their answer, whether the same matters ought again to be called in question in this honorable court.

And these defendants, further answering, severally deny that the said Johnson withdrew his opposition to the caveat and proceedings to vacate the said preëmption, or that the said Johnson and his judgment creditors or either or any of them, shortly prior to the sale of said land, circulated the report that said land and premises were to be bid in at said sale for the benefit of said Johnson, in order to preserve him and his family a homestead, and the improvements by him made; or that by intimidation and threats others were prevented from bidding for said premises; or that said Johnson and his creditors attended said sale in a body and did hinder and prevent persons from bidding at said sale; or that there was any combination conspiracy between the said Johnson and his creditors in regard to said premises in any manner whatever, as alleged in said bill; but these defendants severally allege and charge that the sale of said land, to wit, on or about the 18th day of August, 1860, was regular in all respects, and open and free to all without any hindrance, threats, or intimidation.

And these defendants, further answering, severally say, that he,
23 John H. Kellom, one of these defendants, at the sale of said premises, to wit, on or about the 18th day of August, 1860, did, in his own name, for his own purposes, and to be disposed of at his own control, purchase the one-half of said land, and paid to the proper officers of the Land Department the purchase money and price of the same, the said lands, so purchased by this defendant, John H. Kellom, being the southeast quarter of the northeast quarter of section twenty-one, and the southwest quarter of the northwest quarter of section twenty-two, in township fifteen, north of range thirteen east.

And these defendants, further answering, severally say that, as to whether or not the said Johnson, or the said defendant Sarah A. Johnson, or either of them, or the one in trust for the other, as alleged in said bill, purchased from the Government any portion of the premises aforesaid, these defendants are not advised, and therefore these defendants severally deny all the allegations of said complainants' said bill in that regard.

And these defendants, further severally answering, say that there was no patent issued by the United States Government to said Harrison Johnson for or upon the preëmption of said premises aforesaid, so made by him as aforesaid, and which said preëmption was cancelled
24 as aforesaid, and therefore these defendants severally submit and insist that the said Harrison Johnson had no power to make any such deed or mortgage conveyance as is alleged in said complainants' said bill; and that if any such conveyance was ever made by said Harrison Johnson, the same was and is null and void under the provisions of the said act of Congress of 4th September, 1841, aforesaid.

And these defendants severally deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, & main-

tain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

DAN. GANTT,
Sol. for Kellom and Chapman.

25 On which said paper appears the following endorsements, in words and figures following, to wit:

No. 55. Easley and Willingham vs. Harrison Johnson et al. Answers of John H. Kellom and James G. Chapman. Filed July 13th, 1865. W'm Kellogg, jr., clerk. Filed July 3rd, 1867. E. B. Chandler, clerk. Gantt sol. for Kellom and Chapman.

26

27 And thereupon, afterwards, to wit, on the 3d day of July, A. D. 1867, the following paper was entered, and appears of record in said cause in words and figures following, to wit:

In chancery.

The answer of Harrison Johnson to the bill of complaint exhibited in the district court of Douglas County, Nebraska Territory, against him and others by James S. Easley and William W. Willingham.

This defendant, now and at all times hereafter, saving and reserving unto himself each and all manner of advantage by exceptions or otherwise to the manifold errors, insufficiencies, and imperfections in said bill contained, for answer thereunto, or to so much thereof as this defendant is advised is necessary to make answer thereunto, answering, saith that he denies each and every allegation in said bill contained, except such of said allegations as are by this answer, in so many words, admitted to be true.

This defendant, further answering, positively denies that he ever applied to the said complainants, or either of them, to borrow any sum of money whatever, and further denies that he ever executed any
28 conveyance of the premises described in said bill, or any part thereof, to the complainants or any one else for their benefit, but says that, at the date mentioned in said bill, he obtained of one James D. Test the amount of money mentioned in said bill, for which he executed to said Test his promissory note, due in one year after date; but this defendant says, alleges, and avers that, when the said note became due, the same was fully paid and discharged and surrendered up to this defendant, Harrison Johnson.

This defendant, further answering, denies that he ever gave the said James D. Test any other note in lieu thereof, as charged in said bill, and further denies that it was then and there understood and agreed that the conveyance of a portion of the land charged to have been preëmpted by him, and claimed to have been conveyed to the complainants to secure the payment of the first note hereinbefore mentioned, was to stand as a security for the payment of said second note, as set forth and charged in said bill; but this defendant alleges the truth to be, that, in the taking up the second note and the payment thereof, he had
29 before that time conveyed unconditionally to the said J. D. Test the one-half of the land claimed by him to have been preëmpted

by good and sufficient warranty deed, with full covenants; and this defendant is informed and believes that the said Test has since conveyed, by deed in fee simple, the land hereinbefore mentioned to persons to this defendant at this time unknown.

This defendant, further answering, denies that he ever knew or heard of the complainants in this suit until long after the date of this transaction, as charged in said bill, to wit, two years or more; and that he, Harrison Johnson, never had anything to do with these complainants, and knows nothing concerning them, except that he has since ascertained that they are officers in the rebel army, (so-called,) in the State of Virginia, and have been, for the past four years, in open hostility against the Government of the United States.

This defendant, further answering, denies that he is indebted to the said complainants in any sum whatever; and further answering, says that if it should hereafter appear that any such claim should exist against this defendant, the said Harrison Johnson, he positively denies
30 that the complainants are the owners thereof, or have any interest therein, but that the same is being prosecuted in their name simply, for the benefit of some one else to this defendant unknown.

This defendant, further answering, denies that he, the said Harrison Johnson, for the purpose as in said bill charged, fraudulently conveyed any portion of said land to any one else; but alleges that all conveyances of said land or any part thereof by him made to any since his preëmption, was made in good faith and for a valuable consideration, without intent to defraud any one.

This defendant, further answering, denies that he is and has been hopelessly insolvent without means of paying his debts as in said bill charged, but alleges the truth to be, that he is now and always has been solvent and good, and ready and willing to pay his debts, and has plenty of property, such as it is, to pay the same.

This defendant, further answering, denies that he ever assisted or in any manner aided in the Land Department of the Government to break the preëmption by him made of said premises; but alleges the truth to be that at the time he filed upon and claimed the same tract of
31 land by him preëmpted, a large portion, if not all, was within the incorporate limits of the city of Omaha, which this defendant well knew, and that the said city of Omaha filed said caveat and prosecuted the same before the Land Department and set aside said preëmption upon that ground, and that he had no hand whatever in trying to maintain the action of said city, but on the other hand defended against the same for a long time and at large expense.

This defendant, further answering, admits that the said land by him preëmpted was afterward restored to the said body of public lands and upon the day mentioned in the bill was sold at public auction by the officers of the land office of the United States for the Omaha land district as public land belonging to the United States; but this defendant positively denies that he had any hand in forming any conspiracy of any kind or nature by which the bidding at said public was hindered, or open and free competition prevented, as in said bill charged; and positively denies that there was any combination or conspiracy formed of the kind or character alleged in the bill, or of any other character to this defendant known, but alleges and avers that said public
32 sale was in every way regular and fair, and the bidding open and free to all.

This defendant, further answering, says that at said public auction the

defendant Sarah A. Johnson purchased said premises by her now claimed, being the one-half of the land preëmpted by this defendant, as any other purchaser could have bought in good faith, and paid therefor her own individual money; and further says that every act done in and about said purchase by the defendant was simply and purely as the son and agent of the said Sarah A. Johnson, and positively denies that he had any interest, either directly or indirectly, in the money with which said premises were purchased at said public auction, but alleges that it was the money of Sarah A. Johnson individually, and over which this defendant had not the least control; and further answering, denies that the said Sarah A. Johnson knew anything whatever of the debts or liabilities of this defendant at the time of said purchase; and further answering, denies that there were any improvements on the land now in dispute and claimed by her at the date of said public sale and purchase by her, but alleges that the same was vacant prairie land.

33 This defendant, further answering, alleges that at said public auction and sale of said land, the said Sarah A. Johnson received a certificate of purchase from the proper officers of the land office, but deny that the patent from the United States has been issued to her as alleged in said bill.

This defendant, further answering, denies that he has ever lived upon the land now claimed by her and in dispute, but avers that the said Sarah A. Johnson is a widow and alone, and in consideration of this defendants attending to her matters of business, and in the further consideration of parental affection, permits this defendant to cultivate a portion of said tract now in dispute, but in no other way.

This defendant, further answering, positively denies that the said Sarah A. Johnson purchased said premises at the said public auction, and now holds the title to the same for the purpose of defrauding the creditors of this defendant, as in said bill charged and set forth, but alleges that she purchased said premises with her [own] money, and holds the title to the same in good faith, divested of all liens and incumbrances of every kind and nature.

34 And this defendant denies all unlawful combinations or confederacies with which he stands charged in said bill of complaint; without this that there is any other matter or thing in said bill material or necessary for this defendant to make answer unto, and not herein truly, well, and sufficiently answered, confessed, traversed, avoided or denied, is true to the best knowledge, information, or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall order or direct, and therefore prays to be dismissed with costs.

REDICK AND BRIGGS,
W'M A. LITTLE,
Solicitors for Defendant.

On which said paper appears the following endorsements, in words and figures following, to wit: No. 55. In chancery. Easley et al. vs. Harrison Johnson et al. Answer of Harrison Johnson. Filed June 15th, 1865. W'm Kellogg, jr., clerk. Filed July 3d, 1867. E. B. Chandler, clerk. Redick & Briggs, W. A. Little, solicitors for def'ts.

35 And thereupon, afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

In chancery.

The separate answer of Sarah A. Johnson, one of the defendants to bill of complaint of William W. Willingham and James Easley, exhibited in the district court sitting within and for the county of Douglas, wherein said Willingham and Easley are complainants, and Harrison Johnson et al. are defendants.

This defendant, now and at all times hereafter saving and reserving unto herself all and all manner of benefit and advantage, by exception or otherwise, to the manifold errors, uncertainties, imperfections, and insufficiencies in said complainants' bill contained, for answer thereunto or and to so much thereof as this defendant is advised is material or important for her to make answer unto, answering, says: That she denies each and every allegation in said bill contained, except
36 such allegations as are by this answer expressley and in so many words admitted.

This defendant, further answering, says that the said complainants, Willingham and Easley, were, at the commencement of this suit and before, and are at this time, rebels, (so called,) and were before the commencement of this suit and at that time, and still are, in open arms against the Government of the United States, and as this defendant is informed and believes, were officers in the rebel army at the date of the commencement of this suit, but of what grade this defendant is not informed, and cannot state, and therefore *has* no status in this court.

This defendant, further answering, says that, as to whether the said Harrison Johnson had occasion for a certain sum of money, about the 25th day of June, eighteen hundred and fifty-seven, and applied to these complainants to advance the sum of five thousand six hundred dollars, this defendant has no knowledge, information, or belief, and therefore positively denies the allegations in that regard; and further denies that the said Harrison Johnson ever created his promissory note to the complainants, or the mortgage to secure the same, as in said
37 bill of complaint set forth. And further denies that the said Harrison Johnson is indebted to the said complainants in any sum whatever; and further denies that the said complainants, or either of them, advanced any sum of money whatever to the said Harrison Johnson, as in said bill set forth.

This defendant, further answering, says that she is informed and believes that the said Harrison Johnson did, about the time charged in the bill, file upon and claimed the land described in said bill, under the act of eighteen hundred and forty-one, and about the date mentioned in said bill preëmpted the same from the Government of the United States, as in said bill set forth; but this defendant denies that it was a bona fide and honest preëmption, as by the said act of eighteen forty-one it was required to be; but this defendant alleges the truth to be that the said Harrison Johnson preëmpted the same for the purpose of
38 speculation, and none other, in fraud of the said preëmption act of eighteen hundred and forty-one.

This defendant, further answering, says that after the said Johnson had filed, settled upon, and improved said tract of land, under the said preëmption act of eighteen hundred and forty-one, and before he had entered the same from the Government of the United States, conveyed, by good and sufficient deed, in due form, to divers persons, portions of the tract of land by him afterwards preëmpted in fraud of the said act of eighteen hundred and forty-one.

This defendant, further answering, admits that, some time after his said ent'y of said land, a caveat was filed in the Land Department to vacate and set aside said entry, as this defendant is informed and believes, and that the facts hereinbefore stated were offered in proof before the Land Department, and that the said preëmption was at once cancelled, as was in said bill charged and set forth; but this defendant denies that the said Harrison Johnson took any part in breaking or defeating said preëmption; but, on the other hand, alleges and
39 averres that he expended a large sum of money—five hundred dollars or more—trying to maintain said preëmption, but failed so to do.

This defendant, further answering, says, as to whether said Harrison Johnson and Minerva, his wife, ever conveyed said premises to James D. Test, and Test to Willingham, as in said bill charged and set forth, this defendant has no knowledge, information or belief; therefore denies all the allegations of the bill in that behalf.

This defendant, further answering, says that, as to whether the said Harrison Johnson ever deeded or conveyed the remaining portion of said tract to other persons by way of mortgage, this defendant has no knowledge, information or belief, and therefore denies all the allegations of the bill in that regard; and further denies that there were any judgments against said Harrison Johnson or liens or incumbrances on said land whatever, as in said bill charged and set forth; and further denies that the caveat here'before mentioned, and the several proceedings in the Land Department, as charged in the bill, were had or prosecuted by any one, for the purpose of defrauding the complain-
40 ants or creditors of the said Johnson, as alleged and set forth in the bill; but this defendant averrs that a large portion, if not all, of said tract was within the incorporate limits of the city of Omaha, and not subject to preëmption under the said act of eighteen hundred and forty-one, and that the city of Omaha filed said caveat, and claimed said tract, or a large portion thereof, as city property, and conducted all the proceedings in the Land Department until it was finally decided and settled that the said preëmption was null and void, and the said tract by him preëmpted restored to the body of the public lands, in order that the same might thereafter be advertised and sold by the Government at public auction.

This defendant, further answering, denies that the said Harrison Johnson, in connection with his creditors, or any one else, entered into any conspiracy to have said preëmption vacated and set aside, and procure the land to be sold at public auction by the Government, and there hinder or prevent other persons from purchasing or bidding on said land, or prohibit competition, as in said bill charged and set
41 forth; but this defendant alleges and averrs that said sale was regular in every way; that no one tried to hinder or prevent others from bidding, but that the said sale was open and free to all; and further denies that the said land was worth twenty-five dollars per acre, as in said bill charged and set forth.

This defendant, further answering, denies that the said Johnson did withdraw his opposition to the aforesaid proceedings in the said Land Department, and by reason whereof his said preëmption was vacated as in said bill charged, but alleges the truth to be, that the said preemption was vacated and set aside for the reasons hereinbefore mentioned, and that the said Harrison Johnson continued his defence until the last; and this defendant denies that on the 18th day of August, eighteen hundred and sixty, or at any other time, *that* the said John-

49 And, thereupon, afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

Depositions of witnesses taken in a certain cause pending in the district court of Douglas County, Nebraska, wherein James S. Easley is complainant, and Harrison Johnson et al. defendants.

HARRISON JOHNSON, a witness produced on the part of complainant, being by me first duly sworn, as hereinafter certified, deposes and says:

1st question. By J. M. Woolworth, compl'ts' counsel. Are you one of the defendants in this cause?

Ans. I am.

2. State whether or not, in August, 1860, you were indebted to any persons.

Ans. I was.

3. State whether or not you were indebted to Gilbert C. Monell.

Ans. I was.

4. What was the amount of your debt to him, and when was such debt contracted?

50 It was contracted in the year 1856; the amount was five hundred dollars.

5. Name your other creditors at that time, and state when your debt to each was contracted, and what the amount of the original indebtedness was, irrespective of interest.

Ans. Macons, $600 00; H. O. Jones, $800 00; C. Stone, $1,000 00; Reuben Gaylord, $1,000 00; that was in 1856; that was all that year.

6. State whom you became indebted to in the year 1857, and in what amou nt to each person.

Ans. Willingham and Easley, $4,000 00; John B. Beers, $1,000 00; John McCormick & Co., $500 00; Bank of Bloomington, $300 00; Gridley and Co., $1,200 00; Julia A. Smith, $1,000 00; *Knuckles*, $1,000 00; *Roming* and Johnson, $300 00; that is all in 1857; there is, however, one more; Downs, $800 00—C. H. Downs.

7. State whether or not, in Aug., 1860, you entered into a contract or agreement with said creditors, or any of them, touching the 160 acres previously preëmpted by you.

Ans. I did.

8. What were the terms of that agreement?

(Objected to by Sarah A. Johnson, on the ground that it does
51 not appear that she was a party to such agreement, or knew anything about it.)

(Objected to by J. G. Chapman, on the ground that it is not the best evidence, and for the same reason, by J. H. Kellom.)

Ans. By relinquishing all my claim in the southwest of the northwest of 22, and the southeast of the northeast of 21, township 15, range 13, they would cancel all claims of indebtedness against me.

9. State whether or not, under that agreement, you were, in any event, to have any part of said 80-acre tract. If you were, how much were you to have?

(Objected to by Sarah A. Johnson, on the ground that she knows nothing of the transaction, if there were any such.)

(Objected to by Kellom and Chapman as not best evidence, immaterial, and irrelevant.)

Ans. I was to have the portion of land that belonged to any of the creditors that failed to come into the agreement.

10. Did all of your creditors come into said agreement?

(Same objection by Kellom and Chapman as to previous question.)

52 Ans. They did not.

11. Name those who did not.

Ans. Willingham and Easley; Macon and Jones; Bank of Bloomington; Beers; Julia A. Smith.

12. State whether or not your said creditors were to submit their claims for examination and adjustment to any person; if so, to whom, before they were to be permitted to come in under the agreement.

(Objected to by Sarah A. Johnson, on the ground that it does not appear that she knew anything of any such agreement, if such there was.)

(Objected to by Kellom and Chapman, as not the best evidence, incompetent, and immaterial.)

Ans. They were to submit them to Clinton Briggs, George Armstrong, and J. Damon.

13. What rate of interest were these arbitrators to allow upon the amount of the original indebtedness?

Ans. 10 per cent. per annum.

14. State whether or not you ever received any part of said 80-acre tract under said agreement?

(Objected to by Kellom and Chapman, as not the best evidence, immaterial, and incompetent.)

53 Ans. I did not.

15. Have you that agreement in your possession?

Ans. I have not.

16. Have you had it since it was made?

Ans. I have not.

17. Do you know where it is?

Ans. I do not.

18. Under said agreement, who was to bid off said eighty-acre tract at the then impending sale thereof?

(Objected to by Sarah A. Johnson, on the ground that it does not appear that she had any knowledge of any such agreement, if any such there was.)

(Objected to by Kellom and Chapman, on the ground that it is not the best evidence, incompetent, immaterial, and irrelevant.)

Ans. John H. Kellom.

Cross-examination:

19. Was there anything said or understood in that agreement as to who should bid off the other eighty?

Ans. There was not.

20. You state, in your examination in chief, that you were indebted to H. O. Jones. Do you mean to be understood that you actually owed him a sum of money, or that he in some manner had procured a

54 judgment against you for a sum of money upon a note procured of you without consideration? Please explain.

Ans. Said note was given for lots upon the public land, and nothing else, for which said Jones had no title. He procured a judgment on said note.

21. Who purchased at that public sale the south eighty of the land formerly preëmpted by you?

Ans. Sarah A. Johnson.

22. Whose money paid for that land?
Ans. Her own money.
23. Had you any interest of any kind in the purchase-money?
Ans. I had not.
24. What did she know of the several indebtednesses of which you have just spoken, at the time or before she purchased tract at said public sale?
Ans. She knew nothing about it.

HARRISON JOHNSON.

55 JAMES M. WOOLWORTH, a witness produced on the part of complainants, being first by me sworn, as hereinafter certified, deposes and says:

1st question. Do you know what were the terms of the agreement spoken of by the witness Johnson? If you do, state how you acquired the same, and what they were.
(Objected to by Kellom and Chapman, on the ground that it is not the best evidence, incompetent, irrelevant, and immaterial.)
(Objected to by Sarah A. Johnson, on the ground that it does not appear that she knows anything about said agreement.)
Ans. In the fall of 1860, or winter of 1860-'61, I had a conversation with William F. Sapp, at that time an attorney of this court, in partnership with the defendant Chapman, touching the contents of said agreement. He told me said agreement was at the office of Sapp and Chapman, in this city, and if I would come there he would show it to me. Shortly afterward, in company with the defendant Harrison Johnson, I went to the office of Sapp and Chapman for the purpose of seeing said agreement. No one was in the office. The agreement lay on the
56 table of Mr. Chapman. I took it up and read it over with Mr. Johnson. It was provided in it that at the then impending public sale by the United States, the defendant John H. Kellom should bid in one eighty of the one hundred and sixty acres which Johnson had preëmpted; that his creditors should, within a reasonable time thereafter, submit their claims for adjustment to Clinton Briggs, Geo. Armstrong, and Job A. Damon. These arbitrators were to allow to each creditor of Johnson the amount of his original indebtedness, with interest at the rate of ten per cent. per annum, irrespective of the amount of interest stipulated for in the contract. That the eighty acres should be divided between Johnson's creditors in proportion to the amount so found to be due to them. If any creditor of Johnson did not come in and take, under this agreement, the portion of the land which would have fallen to him should be conveyed to said Johnson. There were some recitals in the contract, if I recollect correctly, and some stipulations touching the other eighty, but exactly what they were I do not remember. My attention was particularly called to the
57 stipulations touching the eighty bid off by Kellom. It was provided in the contract that Johnson should release his claims upon that eighty which he had entered under the preëmption laws, and was not to bid against Kellom at the public sale.

JA'S M. WOOLWORTH.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

I hereby certify that Harrison Johnson and Ja's M. Woolworth, the witnesses testifying above, were by me first duly sworn, according to law, to testify to the truth, the whole truth, and nothing but the truth; that the depositions of said witnesses were reduced to writing in their

presence by me, and that the same were written in the presence of the witnesses, and by them subscribed at the time of taking the same; and I further certify that said depositions were taken at Omaha, Douglas County, Nebraska, on the twelfth day of February, A. D. 1866, in the presence of Redick and Briggs, counsel for defendants Harrison Johnson, Minerva, his wife, and Sarah A. Johnson, and of Daniel Gantt, counsel for defendant J. H. Kellom and James G. Chapman.

58 Witness my hand this 13th day of April, 1866.

GEO. C. HOPKINS,
Master in Chancery.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

TO HARRISON JOHNSON:

We commend and strictly enjoin you personally to be and appear before me, one of the masters of the district court, at my office, in Omaha, on the 12th day of February, A. D. 1866, at 10 o'clock a. m., then and there to testify in a certain cause depending in said court, wherein James S. Easley et al. are plaintiffs, Harrison Johnson et al. defendants, on the part of said complainants. And this you may in no way omit under penalty of being guilty of contempt of court.

Witness my hand this 9th day of February, A. D. 1866.

GEO. C. HOPKINS,
Master in Chancery.

59 JAMES S. EASLEY ET AL. *vs.* HARRISON JOHNSON ET AL. } Subpœna.

Received this subpœna February 10, A. D. 1866. Served by delivering to the within-named Harrison Johnson a certified copy of the original writ.

ANDREW DELLONE,
Sheriff Douglas Co., N. T.

Sheriff's fees.—Serving subpœna, 60; copy, 25; mileage, 10—95.

In the district court of Douglas County, in chancery.

JAMES S. EASLEY ET AL. *vs.* HARRISON JOHNSON, JOHN H. KELLOM, ET AL.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

John H. Kellom, one of defendants in the above-entitled cause, being duly sworn, deposes and says, in response to the notice of complainants served on his solicitor, that he has not in his possession nor under

60 his control any such writing or agreement referred to in said notice, and that he knows nothing of the whereabouts of such writing, if any such is in existence, and has no recollecting of ever signing or having in his possession, at any time, any such writing.

J. H. KELLOM.

Sworn and subscribed the 8th day of February, A. D. 1866.

[L. S.] OSCAR F. DAVIS,
Notary Public.

[5-ct int. rev. stamp, cancelled.]

District court, Douglas County. Ja's S. Easley et al. vs. Harrison Johnson et al. Filed with me, Feb. 12, 1866. Geo. C. Hopkins, master in chancery.

In district court of Douglas County, N. T., in chancery.

JAMES S. EASLEY ET AL.
vs.
HARRISON JOHNSON ET AL.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

James G. Chapman, being duly sworn, deposes and says, that
61 the writing or alleged agreement referred to in the notice of the complainants served on his solicitor in this cause, requiring the production of such writing before G. C. Hopkins, master, to whom said cause is referred to take testimony, is not in his possession or under his control, and that he knows nothing of such alleged writing, or where the same is, if such writing is in existence.

JAMES G. CHAPMAN.

Sworn and subscribed before me this 13th day of February, A. D. 1866.

GEO. C. HOPKINS,
Master in Chancery.

District court, Douglas County. Jas. S. Easley et al. vs. Harrison Johnson et al. Affidavit. Filed with me Feb. 13, 1866. Geo. C. Hopkins, master in chancery.

On which said paper appears the following endorsements, in words and figures following, to wit:

No. 55. Ja's S. Easley et al. vs. Harrison Johnson et al. Depositions of Harrison Johnson and James M. Woolworth. Filed July 3d, 1867. E. B. Chandler, clerk.

62

63 And thereupon, afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

Test to Willingham.

Know all men by these presents that James D. Test and Alice Jane Test, his wife, of the county of Pottawattamie and State of Iowa, in consideration of six thousand dollars in hand paid by William W. Willingham, of the county of Halifax and State of Virginia, do hereby sell and convey unto the said William W. Willingham the following-described premises, situated in the county of Douglas and Territory of Nebraska, to wit:

The northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-one, (21,) township fifteen (15) north of range thirteen (13) east, containing eighty (80) acres.

And we do hereby covenant with the said William W. Willingham

that we are lawfully seized of said premises; that they are free from incumbrances; and we do hereby covenant to warrant and defend
64 the said premises against the lawful claims of all persons whomsoever.

And the said Alice Jane Test relinquishes her right of dower in and to the above-described premises.

In witness whereof we have hereunto set our hands this tenth day of May, A. D. 1858.

JAMES D. TEST.
ALICE JANE TEST.

Attest:
J. P. CASADY.

STATE OF IOWA, *Pottawattamie County, ss:*

On this 10th day of May, A. D. 1858, personally appeared before me, a notary public in and for said county of Pottawattamie and State of Iowa, James D. Test and Alice Jane Test, personally known to me to be the identical persons whose names are affixed to the above conveyance, as grantors, and acknowledged the execution of the same to be their voluntary act and deed, for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand and notarial seal this tenth day of May, A. D. 1858.

[L. S.] J. P. CASSADY,
Notary Public.

65 Recorded July 26th, 1858.

THE STATE OF NEBRASKA, *Douglas County, ss:*

I, Frank Murphy, county clerk and ex-officio register of deeds within and for said county, do hereby certify that the foregoing is a true and correct copy of the records of said Douglas County, as appears from book "J," page 594.

Witness my hand and official seal this 10th day of July, A. D. 1867.

[L. S.] FRANK MURPHY,
County Clerk and ex-officio Register of Deeds.

On which said paper appears the following endorsement, in words and figures following, to wit:

55. James D. Test to W. W. Willingham. Filed July 3rd, 1867. E. B. Chandler, clerk. For Woolworth.

66

67 And thereupon, afterwards, to wit, on the 3d day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

Depositions of witnesses, taken in a certain cause now pending in the district court of Douglas County, Nebraska, in chancery, wherein James S. Easley et al. are complainants, and Harrison Johnson et al. are defendants.

JOHN H. KELLOM, a witness produced on the part of the defendants,

except the Johnsons, being by me first duly sworn, as hereinafter certified, deposes and says:

1st question by comp't's counsel. What is your name, age, occupation, and place of residence?

Ans. I am 41 years old; am assessor and insurance agent; live in Omaha.

2. Are you one of the parties to this suit?

Ans. I am.

3. Whether or no did you purchase, at the public sale of the United States, any portion of the land in question in this suit? And, if you answer yea, state what part of the same you did so purchase.

68 Ans. Yea; I purchased the southwest quarter of the northwest quarter of section twenty-two; and the southeast quarter of the northeast quarter of section twenty-one, in township fifteen north, of range thirteen east, in the district of lands subject to sale at Omaha, Nebraska.

4. Whether or no did you make said purchase of said land for yourself, or for yourself and others; and if for yourself and others, who were the others?

Ans. I made the purchase for myself and others; Mrs. Anna Hitchcock, represented by G. C. Monell, Reuben Gaylord, myself, John McCormick, C. H. Downs, S. F. Nuckolls, represented by John McConihe, Messrs. Conant and Johnson, and Calvin E. Stone.

5. Whether or no was any agreement entered into by and between yourself and those you have named, for whom, with yourself, the purchase of the land was made by you and Harrison Johnson, by which said land, or any portion or part of the same, so purchased by you,

69 was to revert to said Harrison Johnson, in proportion to the debts of his creditors, who were not parties with you in making said purchase?

(Objected to, it having already appeared that the agreement was in writing, and said question does not call for the best evidence nor the contents of the writing, and is leading, by def'ts' counsel.)

Ans. I know of no such agreement.

6. Look at this map, marked Exhibit "A," and state whether or not it shows a description of the land purchased by you, and the subdivisions of said land in which it was divided between you and the other parties for whom, you state, you purchased.

Ans. This is a correct description of the tract purchased, and of the subdivisions of the same among the persons for whom I purchased.

7. Of the purchasers, yourself and the others whom you have named, please state to which one each subdivision, as numbered in this map, was *deed* by a conveyance, as the interest of such one in the tract purchased by you.

Ans. Lot one, to Mrs. Hitchcock, or possibly to Dr. Monell; lot two, to Reuben Gaylord; lot four, to John McCormick; lot five, to

70 C. H. Downs; lot six, to L. [S] F. Nuckolls; lot nine, to Calvin E. Stone; lot three I retained in my own name.

8. State whether or no lot three was, at any time, enclosed, and *and* by cultivation or residence.

Ans. Since I have been in the Territory it has not been enclosed, cultivated, or used as a place of residence.

9. How long have you been in the Territory?

Ans. Ten years, lacking one month.

10. Whether or no, within the time you have been the Territory, has lot four been enclosed and used by cultivation and residence?

Ans. It has not.

Cross-examined by Mr. Woolworth:

Who composed the firm of H. Gridley and Co.?

(Objected to by Mr. Gantt, as not proper cross-examination, and immaterial and irrelevant.)

Ans. Frederick Gridley & John H. Kellom.

11. State the day, and month, and year, on which you purchased these lands from the United States.

Ans. On or about August 18, 1860.

71 12. Was it at public sale?

Ans. It was.

13. Was Johnson indebted to F. Gridley & Co. at that time?

Ans. He was.

14. Is he indebted to them at the present time?

Ans. He is not.

15. Did he ever pay his debt to said firm in money?

Ans. He did not.

16. What was the consideration for its discharge?

Ans. Lot three in Capitol addition.

17. At the time of your purchase of these lands from the United States, were not the other persons for whom you say you purchased the same *for*, Mrs. Hitchcock alone excepted, creditors of Johnson?

Ans. They claimed to be, and I believe were.

18. Were not the lands parcelled out to them, as you say you deeded the same to them respectively as creditors of Johnson?

Ans. They were.

19. Are you not mistaken when you say you deeded lot six to S. F. Nuckolls; was not the deed made to Houston Nuckolls?

72 Ans. I am mistaken. It was made to Houston Nuckolls.

20. Was not lot one, if the same was deeded to Mrs. Hitchcock, so deeded on account of a debt of Johnson to Monell?

Ans. It was.

21. Did you not make an agreement with these several creditors of Johnson to bid off the land at the public sale, prior to the sale?

Ans. I did.

22. Was not the agreement made the day before and morning of the sale?

Ans. I think it was.

Was it not reduced to writing?

Ans. I don't recollect that it was. I have no recollection of signing any agreement. If there was a written agreement, I probably signed it.

23. In order to refresh your recollection, I will ask you if you do not remember that Jonas Seeley discussed the terms of the agreement with the creditors?

(Objected to by Mr. Gantt, irrelevant, incompetent, and calls for the declaration of third parties.)

73 Ans. I remember that Jonas Seeley represented Mr. Johnson, or acted as his attorney in this arrangement.

24. That being recalled to your attention, now do you not remember Mr. Seeley's drawing a paper containing the terms of the agreement, which the creditors signed?

Ans. I do not recollect that he drew any agreement that I signed. I do not wish to be understood as saying that there was not an agreement which I signed.

25. Don't you remember that there was a good deal of discussion

among the creditors as to the validity of a debt claimed by Charles F. Smith, or Julia, his wife?

(Objected to by Mr. Gantt as not proper cross-examination, and irrelevant.)

Ans. I reccollect that his claim was questioned, and referred, with others, to a committee composed of three persons, to wit, Judge Armstrong, Judge Briggs, and another whom I do not remember.

26. Do you not now remember that Mr. McConihe signed the name of Charles B. Smith to the agreement?

Ans. I do not.

27. Were not these lands which you bid off a part of the original preëmption claim of Johnson?

74 Ans. I have no doubt that they were.

J. H. KELLOM.

The defendants here offer in evidence, as Exhibit "B," to be read on the hearing of this cause, certified copy of deed from Harrison Johnson and Minerva, his wife, to James D. Test. Also, a certified copy of the letter of the Commissioner of the General Land Office, dated Dec. 29, 1859, marked Exhibit "C."

The complainants offer in evidence certified copies of records hereto attached and marked as follows: No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8.

JAMES M. WOOLWORTH, a witness produced on the part of the complainants, being by me first duly sworn, as hereinafter certified, deposes and says:

1. Question by comp'ts' counsel. What interests appeared of record in *in* so much of the premises in question in this case as Kellom purchased at the time of the filing of the bill; what are your means of knowledge?

75 Ans. At the time of filing the bill, I carefully searched the records in the office of the register of deeds in Douglas County, in order to learn who held interests in said premises. I found the interests stood as stated by Mr. Kellom, in his deposition, as follows: A part of lot 3, and the whole of lot 5, stood in said Kellom's, unconveyed by him; lots 4, 5, & 6, he had conveyed as he has stated.

2. Do you know, if so, state, when the agreement between Johnson and his creditors was made?

(Objected to, as not evidence, by Mr. Gantt.)

Ans. It was made on the day before and morning of the sale, to wit, the 17th and 18th of August, 1860.

3. Do you know, if so, state, whether or not said Johnson ever, and if so, when, called upon Kellom and the other persons who had secured interests in the premises to set off to him any parts of the land? State your means of knowledge.

(Objected to as irrelevant and immaterial.)

Ans. The agreement was signed with the name Charles B. Smith,
76 put there by John McConihe. The parties who came into the arrangement objected to Smith's being let in, believing, as they did, that he held no valid claim against Johnson; that the claim was interposed nominally by Mr. McConihe, in fact, by Jonas Seeley, Johnson's att'y, in order to secure to Johnson more land than under the agreement he would be in any event entitled to after the partition was made; but I think before Kellom had executed the deeds, Johnson, by his attorneys, Seeley and myself, applied to Kellom and the creditors for a

re-partition, claiming from them such parts of the premises as would have fallen to Mrs. Smith Willingham and Easley, J. B. Beers, Augustus Macon, H. O. Jones, and the Bloomington Bank, had they come into the agreement. I cannot fix the day of this demand, but I think early in the fall of 1860.

(All of the first part of the answer is objected to by Mr. Gantt as not responsive; also that there is no evidence that John McConihe was the attorney of Charles B. Smith, or had any authority to act for Smith.)

77 4. State whether or not Johnson was in fact indebted to either Smith or his wife; if so, how much, and how the debt arose.

(Objected to as irrelevant and immaterial.)

Ans. Johnson purchased from Smith, some time previous to this, lands in this county, in part payment for which he gave his note for $1,000. This note was made payable to Mrs. Smith. Johnson paid it about three years ago.

5. Did Johnson ever pay any other of said debts?

Ans. He paid Macon's. I knew of no others.

6. Did any of the creditors who did not finally come into said agreement participate in the negotiations which led to the same?

(Objected to by Mr. Gantt as irrelevant and immaterial.)

Ans. All of them did but the Bloomington Bank. The amount of their claims originally were known and discussed.

Cross-examination by Mr. Gantt:

Describe the land you say Smith purchased from Johnson for which the note you mention was given.

78 Ans. I cannot; but think it is the land lying on Saddle Creek.

8. Had Smith any title to said land under the Gov't of the United States, at the time you speak of?

Ans. My impression is that he sold the claim title, and had not acquired title from the Gov't.

9. When was that sale made, and note given; and what year?

Ans. I cannot now state more exactly than that I think it was two or three years before this public sale.

10. When was the first entry of lands made in this land district?

Ans. The Omaha land district originally comprised the whole Territory. It was open for preëmption of lands in this county early in the spring of 1857. The first public sale was the fifth of July, 1859, I think.

11. How was the claim of Smith's paid by Johnson; in what, and when?

Ans. I cannot state further than Smith and Johnson came to an agree
ment about and the debt was cancelled according to my best
79 recollection in the summer of 1863. I knew of it at the time.

JAMES M. WOOLWORTH.

GILBERT C. MONELL, a witness, being produced on the part of th defendants, except the Johnsons, being first duly sworn by me as her inafter certified, deposes and says:

1st. Question by D. Gantt, counsel. What is your age, occupation and place of residence?

Ans. Am 50 years of age; live in Omaha; physician.

2. State whether or not you were one of the parties and purchase for whom John H. Kellom purchased, at the public sale of the Unite States, a part of the land in question in this suit.

Ans. I was.

among the creditors as to the validity of a debt claimed by Charles F. Smith, or Julia, his wife?

(Objected to by Mr. Gantt as not proper cross-examination, and irrelevant.)

Ans. I reccollect that his claim was questioned, and referred, with others, to a committee composed of three persons, to wit, Judge Armstrong, Judge Briggs, and another whom I do not remember.

26. Do you not now remember that Mr. McConihe signed the name of Charles B. Smith to the agreement?

Ans. I do not.

27. Were not these lands which you bid off a part of the original preëmption claim of Johnson?

74 Ans. I have no doubt that they were.

J. H. KELLOM.

The defendants here offer in evidence, as Exhibit "B," to be read on the hearing of this cause, certified copy of deed from Harrison Johnson and Minerva, his wife, to James D. Test. Also, a certified copy of the letter of the Commissioner of the General Land Office, dated Dec. 29, 1859, marked Exhibit "C."

The complainants offer in evidence certified copies of records hereto attached and marked as follows: No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8.

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1. Question by comp'ts' counsel. What interests appeared of record in *in* so much of the premises in question in this case as Kellom purchased at the time of the filing of the bill; what are your means of knowledge?

75 Ans. At the time of filing the bill, I carefully searched the records in the office of the register of deeds in Douglas County, in order to learn who held interests in said premises. I found the interests stood as stated by Mr. Kellom, in his deposition, as follows: A part of lot 3, and the whole of lot 5, stood in said Kellom's, unconveyed by him; lots 4, 5, & 6, he had conveyed as he has stated.

2. Do you know, if so, state, when the agreement between Johnson and his creditors was made?

(Objected to, as not evidence, by Mr. Gantt.)

Ans. It was made on the day before and morning of the sale, to wit, the 17th and 18th of August, 1860.

3. Do you know, if so, state, whether or not said Johnson ever, and if so, when, called upon Kellom and the other persons who had secured interests in the premises to set off to him any parts of the land? State your means of knowledge.

(Objected to as irrelevant and immaterial.)

Ans. The agreement was signed with the name Charles B. Smith,
76 put there by John McConihe. The parties who came into the arrangement objected to Smith's being let in, believing, as they did, that he held no valid claim against Johnson; that the claim was interposed nominally by Mr. McConihe, in fact, by Jonas Seeley, Johnson's att'y, in order to secure to Johnson more land than under the agreement he would be in any event entitled to after the partition was made; but I think before Kellom had executed the deeds, Johnson, by his attorneys, Seeley and myself, applied to Kellom and the creditors for a

re-partition, claiming from them such parts of the premises as would have fallen to Mrs. Smith Willingham and Easley, J. B. Beers, Augustus Macon, H. O. Jones, and the Bloomington Bank, had they come into the agreement. I cannot fix the day of this demand, but I think early in the fall of 1860.

(All of the first part of the answer is objected to by Mr. Gantt as not responsive; also that there is no evidence that John McConihe was the attorney of Charles B. Smith, or had any authority to act for Smith.)

77 4. State whether or not Johnson was in fact indebted to either Smith or his wife; if so, how much, and how the debt arose.

(Objected to as irrelevant and immaterial.)

Ans. Johnson purchased from Smith, some time previous to this, lands in this county, in part payment for which he gave his note for $1,000. This note was made payable to Mrs. Smith. Johnson paid it about three years ago.

5. Did Johnson ever pay any other of said debts?

Ans. He paid Macon's. I knew of no others.

6. Did any of the creditors who did not finally come into said agreement participate in the negotiations which led to the same?

(Objected to by Mr. Gantt as irrelevant and immaterial.)

Ans. All of them did but the Bloomington Bank. The amount of their claims originally were known and discussed.

Cross-examination by Mr. Gantt:

Describe the land you say Smith purchased from Johnson for which the note you mention was given.

78 Ans. I cannot; but think it is the land lying on Saddle Creek.

8. Had Smith any title to said land under the Gov't of the United States, at the time you speak of?

Ans. My impression is that he sold the claim title, and had not acquired title from the Gov't.

9. When was that sale made, and note given; and what year?

Ans. I cannot now state more exactly than that I think it was two or three years before this public sale.

10. When was the first entry of lands made in this land district?

Ans. The Omaha land district originally comprised the whole Territory. It was open for preëmption of lands in this county early in the spring of 1857. The first public sale was the fifth of July, 1859, I think.

11. How was the claim of Smith's paid by Johnson; in what, and when?

Ans. I cannot state further than Smith and Johnson came to an agreement about and the debt was cancelled according to my best
79 recollection in the summer of 1863. I knew of it at the time.

JAMES M. WOOLWORTH.

GILBERT C. MONELL, a witness, being produced on the part of the defendants, except the Johnsons, being first duly sworn by me as hereinafter certified, deposes and says:

1st. Question by D. Gantt, counsel. What is your age, occupation, and place of residence?

Ans. Am 50 years of age; live in Omaha; physician.

2. State whether or not you were one of the parties and purchasers for whom John H. Kellom purchased, at the public sale of the United States, a part of the land in question in this suit.

Ans. I was.

3. Can you give the names of the persons who were purchasers with Kellom of that part of the land purchased by Kellom for him and said others? If so, give their names.

Ans. I think I can. Mr. Stone, McCormick, and Johnson, Mr. Nuckolls, Mr. Downs, Mr. McCormick, Mr. Kellom, Mr. Gaylord, and myself. I believe that is all.

80 4. State whether or not there was any agreement entered into between said purchasers of said land whom you have named and Harrison Johnson, by which any portion of said lands so purchased by you and the others you have named should revert to said Harrison Johnson in proportion to the debts of his creditors, who were not parties, as stated by you, in the making such purchase.

Ans. There was not.

G. C. MONELL.

TERRITORY OF NEBRASKA,
Douglas County, ss:

I hereby certify that the witnesses above testifying were by me first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth; that the depositions of said witnesses were reduced to writing in their presence by me; and that the same were written in the presence of the witnesses, and by them subscribed at the time of taking the same.

Witness my hand this 2nd day of November, 1866.

GEORGE C. HOPKINS,
Master in Chancery.

81 On which said paper appears the following endorsement, in words and figures following, to wit:

No. 55. Filed June 3d, 1867. E. B. Chandler, clerk.

82

83 And thereupon afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered, and appears of record in said cause, in words and figures following, to wit:

Know all men by these presents that we, Harrison Johnson and Minerva Johnson, his wife, of the county of Douglas, and Territory of Nebraska, in consideration of the sum of five thousand and six hundred dollars in hand paid by James D. Test, of the county of Pottawattamie, and State of Iowa, do hereby sell and convey unto the said James D. Test, the following-described premises, situated in the county of Douglas, and Territory of Nebraska:

The northwest quarter of the southeast quarter and the southeast quarter of the northeast quarter of section No. (21) twenty-one, township No. fifteen (15) north, of range No. thirteen (13) of the 6th P. M., containing eighty acres. And we do hereby covenant with the said James D. Test that we are lawfully seized of said premises; that they are free from incumbrances; and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons

84 whomsoever; and the said Minerva Johnson relinquishes her right of dower in and to the above-described premises.

In witness whereof we have hereunto set our hands this 26th day of June, A. D. 1857.

HARRISON JOHNSON.
MINERVA + JOHNSON.
mark.

Attest:
J. SEELY.

DISTRICT OF NEBRASKA,
Douglas County:

On this 28th day of June, A. D. 1857, personally appeared before me, a notary public in and for said county, Harrison Johnson, and Minerva Johnson, his wife, personally known to me to be the identical persons whose names are affixed to the above conveyance as grantors, and acknowledged the execution of the same to be their voluntary act and deed, for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand, at Omaha, this 28th day of June, A. D. 1857.

J. SEELEY.

Filed and recorded July 2, 1857, at 11 o'cl'k a. m.

Attest:

THOMAS O'CONNER, *Reg'r.*

85 TERRITORY OF NEBRASKA,
Douglas County, ss:

I, Frank Murphy, county clerk in and for said county, and ex-officio register of deeds and mortgages for said county, do hereby certify that the within is a true and correct copy of the record of the foregoing conveyance from Harrison Johnson and Minerva Johnson to James D. Test, so full and entire as the same remains of record in deed-docket "F" in the registry of deeds in said office, and that this is the only docket in said office in which said conveyance is recorded.

Witness my hand and seal of office this 6th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk Douglas Co.

86 GENERAL LAND OFFICE, *Dec.* 29, 1859.

REGISTER AND RECEIVER, *Omaha City, N. T.*

GENTLEMEN: Referring to your letter of 4th June, 1858, addressed to this office in the matter of the city of Omaha vs. Harrison Johnson, I have now to advise you that the certificate of location for warrant No. 32,736, act of 1855, conveying the N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of sec. 21, and S. W. ¼ of N. W. ¼ and N. W. ¼ of N. W. ¼ of sec. 22, T. 15 N., R. 13 E., in the name of the aforesaid Harrison Johnson, has been cancelled, the evidence in the case being satisfactory as to the illegality of the location made per warrant and by the party aforesaid. Be pleased to note the cancellation on your books and plats.

Very respectfully, &c.,

JA'S S. WILSON,
Acting Com's'r.

TERRITORY OF NEBRASKA,
Douglas County, ss:

I, B. M. Trumbull, receiver of the United States land office for the land district of Omaha, N. T., do hereby certify that the above is
87 a true and correct copy of the letter on file in said office from the Commissioner of the General Land Office of the U. S., so full and entire as the same remains of record and on file in said land office.

Witness my hand this 6th day of April, A. D. 1866.

B. M. TRUMBULL, *Receiver.*

Kellom to McCormick.

In consideration of the sum of seven hundred and seventeen $\frac{83}{100}$ doll's to us paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Harriett N. Kellom, of the county of Douglas, and Territory of Nebraska, do hereby sell and convey unto John McCormick, of the county of Douglas, and Territory of Nebraska, the following described real estate, to wit: Lot (4) and lot (8) eight in the Capital addition to Omaha City, as recorded by John H. Kellom, November 12, A. D. 1860, in the office of register of deeds for Douglas Co. aforesaid, containing seven $\frac{50}{100}$ acres, more or less; and do hereby covenant with the said John McCormick that we are lawfully seized of said premises;
88 that they are free from incumbrances; and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming by or through us.

Witness our hands this thirteenth day of November, A. D. 1860.

JOHN H. KELLOM.
HARRIETTE KELLOM.

In presence of—
JOHN MCCORMICK.

TERRITORY OF NEBRASKA,
Douglas County, ss:

On this thirteenth day of November, A. D. 1860, before me, a notary public in and for said county, appeared the above-named John H. Kellom, and Harriette N. Kellom, his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[SEAL.] JOHN MCCONIHE,
Notary Public Douglas County, N. T.

Recorded December 6th, 1861, at 3 o'clock p. m., book O, p. 29.

COUNTY CLERK'S OFFICE,
Douglas Co., Neb., ss:

I, Frank Murphy, co. cl'k in and for said county, do hereby cer-
89 tify that the foregoing deed is a full, true, and correct copy of the record of said deed now on record in this office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

Kellom to Gaylord.

In consideration of the sum of eleven hundred and thirty-seven $\frac{45}{100}$ dollars to us paid, the receipt whereof is hereby acknowledged, we John H. Kellom and Harriette N. Kellom, of the county of Douglas and Territory of Nebraska, do hereby sell and convey unto Reuben Gaylord, of the county of Douglas, and Territory of Nebraska, the following described real estate, to wit: Lot two (2) in the Capital addition to the city of Omaha, as recorded by John H. Kellom, November 12th, 1860, in the office of the register of deeds for Douglas Co. aforesaid, and containing $7\frac{74}{100}$ acres, more or less; and do hereby covenant with the said Reuben Gaylord that we are lawfully seized of the said premises; that

they are free from incumbrance; and do hereby covenant to
90 warrant and defend said premises against the lawful claims of all persons whomsoever claiming by or through us.

Witness our hands this thirteenth day of November, A. D. 1860.

JOHN H. KELLOM.
HARRIETTE N. KELLOM.

In presence of—
JOHN MCCONIHE.

TERRITORY OF NEBRASKA,
Douglas County, ss:

On this thirteenth day of November, A. D. 1860, before me, a notary public in and for said county, appeared the above-named John H. Kellom, and Harriette N. Kellom, his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[SEAL.] JOHN MCCONIHE,
Notary Public Douglas County, N. T.

Recorded December 23, 1861, at 11 o'clock a. m., book O, p. 40.

COUNTY CLERK'S OFFICE,
Douglas Co., N. T., ss:

I, Frank Murphy, co. cl'k in and for said county, do hereby certify that the foregoing deed is a full, true, and correct copy of the record of said deed now on record in this office.

Witness my hand and official seal this 7 day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

91 *Kellom to Conant.*

In consideration of the sum of eighty-seven $\frac{71}{100}$ to us paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Harriett N. Kellom, of the county of Douglas, and Territory of Nebraska, do hereby sell and convey to Ezra Conant, of the county of Douglas and Territory of Nebraska, the following-described real estate, to wit: One and thirty-three ($1\frac{33}{100}$) acres of ground more or less, it being the east part with, and lies of equal length of lot seven (7) in the Capitol addition to Omaha City as recorded by John H. Kellom, November 12th, 1860, in the office of the register of deeds for Douglas County aforesaid, and do hereby covenant with the said Ezra Conant, that we are lawfully seized of the said premises; that they are free from incumbrance; and do hereby covenant to warrant and defend the same against the lawful claims of all persons whomsoever claiming through or by us.

Witness our hands this twenty-fifth day of January, A. D. 1861.

JOHN H. KELLOM.
HARRIETTE N. KELLOM.

In presence of—
GEO. I. GILBERT.

92 TERRITORY OF NEBRASKA,
Douglas County:

On this 25th day of January, A. D. 1861, before me, a justice of the

peace in and for said county, personally appeared the above-named John H. Kellom and Harriette N. Kellom, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

Witness my hand the day and year first above written.

GEO. I. GILBERT,
Justice of the Peace in said County.

Recorded February 5, 1862, at 10 o'clock a. m., B. O, p. 70.

COUNTY CLERK'S OFFICE,
Douglas County, N. T., ss:

I, Frank Murphy, co. cl'k in and for said co., do hereby certify that the foregoing deed is a full, true, and corect copy of the record of said deed now on record in this office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

93 *Kellom to Damon.*

In consideration of the sum of thirteen hundred and sixty-nine $\frac{87}{100}$ dollars, to us paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Harriette N. Kellom, of the county of Douglas, and Territory of Nebraska, do hereby sell and convey to Job W. Damon, of the county of Douglas, and Territory of Nebraska, the following-described real estate, to wit: Lot nine (9) in the Capitol addition to Omaha City, as recorded by John H. Kellom, November 12th, 1860, in the office of register of deeds for Douglas Co. aforesaid, and containing nine (9) $\frac{73}{100}$ acres, more or less, and do hereby covenant with the said Job W. Damon that we are lawfully seized of said premises; that they are free from incumbrances; and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming through us.

Witness our hand this thirteenth day of November, A. D. 1860.

JOHN H. KELLOM.
HARRIETTE N. KELLOM.

In presence of—
JOHN MCCONIHE.

94 TERRITORY OF NEBRASKA,
Douglas County, ss:

On this thirteenth day of November, A. D. 1860, before me, a notary public in and for said county, appeared the above-named John H. Kellom and Harriette N. Kellom, his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[L. S.] JOHN MCCONIHE,
Notary Public, Douglas County, N. T.

Recorded March 25, 1862, at 2 o'cl'k p. m., book O, p. 167.

COUNTY CLERK'S OFFICE,
Douglas Co., N. T., ss:

I, Frank Murphy, co. cl'k in and for said county, do hereby certify that the foregoing deed is a full, true, and copy of the record of said deed now on record in said office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

95 *Kellom to Nuckolls.*

In consideration of the sum of thirteen hundred and ninety $\frac{35}{100}$ dollars to us paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Harriette N. Kellom, of the county of Douglas, and Territory of Nebraska, do hereby sell and convey to Houston Nuckolls, of the county of , the following-described real estate, to wit: Lot No. six, (6,) in the Capitol addition to the city of Omaha, as recorded by John H. Kellom, Nov. 12, 1866, in the office of the register of Douglas County aforesaid, containing $16\frac{6}{100}$ acres, more or less; and do hereby covenant with the said Houston Nuckolls that we are lawfully seized of said premises; that they are free from incumbrances; and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming by or through us.

Witness our hands this 19th day of November, A. D. 1860.

JOHN H. KELLOM.
HENRIETTE N. KELLOM.

In presence of—
JOHN MCCONIHE.

96 TERRITORY OF NEBRASKA,
Douglas County, ss:

On this thirteenth day of November, A. D. 1860, before me, a notary public in and for said county, appeared the above-named John H. Kellom and Harriette N. Kellom, his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[S. S.] JOHN MCCONIHE,
Notary Public.

Rec'd for record Mar. 15, 1861, at 9 o'cl'k a. m., book N, of deeds, p. 225.

COUNTY CLERK'S OFFICE,
Douglas Co., N. T., ss:

I, Frank Murphy, co. clerk in and for said county, do hereby certify that the foregoing deed is a full, true, and correct copy of the record of said deed now on record in this office.

Witness my hand and official seal this 7th day of April, 1866.

[L. S.] FRANK MURPHY,
County Clerk.

97 *Kellom to Monell.*

In consideration of the seven hundred and sixty-five $\frac{16}{100}$ dollars to us

paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Harriette N. Kellom, of the county of Douglas and Territory of Nebraska, do hereby sell and convey to Gilbert C. Monell, of the county of Douglas, and Territory of Nebraska, the following described real estate, to wit: All that piece or parcel of ground marked lot one, in the Capital addition to the city of Omaha, as platted and recorded in the office of *or* register of deeds for Douglas County aforesaid, by John H. Kellom, on Nov, 12, 1860, said lot containing $3\frac{47}{100}$ acres, more or less, and do hereby covenant with the said Gilbert C. Monell that we are lawfully seized of said premises; that they are free from incumbrances, and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever claiming through or by us.

Witness our hands this 19th day of November, A. D. 1866.

JOHN H. KELLOM.
HARRIETTE N. KELLOM.

In presence of—
JOHN MCCONIHE.

98 TERRITORY OF NEBRASKA,
Douglas County, ss:

On this 13 day of November, A. D. 1860, before me, a notary public in and for said county, appeared the above-named John H. Kellom, and Harriette N. Kellom, his wife, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be *his* voluntary act and deed.

[L. S.] JOHN MCCONIHE,
Notary Public.

Rec. for record Mar. 15, 1861, at 2 o'cl'k p. m., book N, p. 227.

COUNTY CLERK'S OFFICE,
Douglas County, N. T., ss:

I, Frank Murphy, co. cl'k in and for said co., do hereby certify that the foregoing deed is a true and correct copy the record of said deed now on record in this office.

Witness my hand and official seal this 7th day of April, 1866.

[L. S.] FRANK MURPHY,
County Clerk.

99 *John H. Kellom to W'm Johnson.*

In consideration of eighty-seven $\frac{41}{100}$ dollars to us paid, the receipt whereof is hereby acknowledged, we, John H. Kellom and Henriette N. Kellom, of the county of Douglas and Territory of Nebraska, do hereby sell and convey to William Johnson, of the county of Douglas and Territory of Nebraska, the following-described real estate, to wit: One and twenty-five hundredths ($1\frac{25}{100}$) acres of grounds, more or less, it being the west part, with end lines of equal length, of lot seven, (7,) in the Capitol addition to Omaha City, as recorded by John H. Kellom, November 12th, 1860, in the office of register of deeds of Douglas County aforesaid, and do hereby covenant with the said William Johnson that we are lawfully seized of said premises; that they are free from incumbrances; and do hereby covenant to warrant and defend the said

premises against the lawful claims of all persons whomsoever claiming by or through us.

Witness our hands this 25th day of January, A. D. 1861.

JOHN H. KELLOM.
HARRIETTE N. KELLOM.

In presence of—
GEORGE I. GILBERT.

100 TERRITORY OF NEBRASKA,
County of Douglas, ss:

On this 25th day of Jam., A. D. 1861, before me, a justice of the peace in and for said county, appeared John H. Kellom and Harriette N. Kellom, above named, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

GEORGE I. GILBERT,
Justice of the Peace.

Rec'd for record Jan. 8th, 1861, at *at* 9 a. m., book N, pp. 148.

COUNTY CLERK'S OFFICE,
Douglas Co., N. T., ss:

I, Frank Murphy, co. c'lk in and for said co., do hereby certify that the foregoing deed is a full, true, and correct copy of the record of said deed now on record in this office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

On which said paper appears the following endorsements in words and figures following, to wit:

No. 55. Filed July 3d, 1867. E. B. Chandler, clerk.

(Here follows maps marked page 101.)

101 Being the S. E. ¼ of the N. E. ¼ of sec. 21, and the S. W. ¼ of the N. W. ¼ of sec. 22, 15, 13.

OMAHA, NEBRASKA, *November 10th*, 1860.

The disposition of my land as shown by this platt is made with my free consent, and in accordance with my desire; and I hereby, for the purpose of public highway, dedicate to the public the streets named Farnham and Twentieth, herein indicated.

JOHN H. KELLOM.

In presence of—
O. F. DAVIS.

TERRITORY OF NEBRASKA,
Douglas County, ss:

Be it remembered that, on this tenth day of November, A. D. eighteen hundred and sixty, before me, a justice of the peace in and for said county, in person came John H. Kellom, to me well and personally known to be the identical person whose name is subscribed to the above statement and dedication, and acknowledged the same to be his voluntary act and deed.

In witness whereof I have hereunto set my hand the day and year above named.

GEO. I. GILBERT,
Justice of the Peace.

Recorded book of deeds, page 619.

COUNTY CLERK'S OFFICE,
Douglas Co., Neb., ss:

I, Frank Murphy, co. cl'k in and for said county, do hereby certify that the foregoing plat of the Capitol addition to the city of Omaha is a full and correct copy from the records of said office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

102 And thereupon afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

Deposition of JEFFERSON P. CASADY, a witness produced, sworn, and examined by and on behalf of the complainants in a certain cause depending in the district court of the Territory of Nebraska for the first judicial district and county of Douglas, between James S. Easley and William W. Willingham, complainants, and Harrison Johnson and others, defendants, under and in pursuance of the commission and interrogatories hereto annexed.

JEFFERSON P. CASADY, being duly sworn, as hereinafter certified—

To the first interrogatory, answering says: Jefferson P. Casaday; thirty-six years; real estate agent; Council Bluffs, Iowa.

To the second interrogatory he, answering says: I have known
103 the complainants and defendants—Harrison Johnson and his wife, ten years; defendants Kellom and Chapman seven years; do not know the other defendants.

To the third interrogatory he, answering, says: I am agent for complainants, and have been since 1853.

To the fourth interrogatory he, answering, says: About the 26th of June, 1857, I, as agent for the complainants, loaned of their money in my hands for the purpose four thousand dollars to Harrison Johnson, at Council Bluffs, Iowa. I took as security his note for the amount, payable to the order of the complainants one year from date; also a deed made by him and his wife to James D. Test, which deed is hereto annexed, marked Exhibit "A." The lands conveyed in it had recently been preëmpted by Johnson from the United States. Said Test was my partner at the time, and we were both acting for the complainants in the transaction. He took the title in trust for the complainants, and as security for the money loaned.

104 To the fifth interrogatory he, answering, says: One year from its date. It was not paid at maturity; it was renewed by Johnson giving another note, with accumulated interest, and also interest to accrue during the next year, which is hereto annexed, marked Exhibit "B."

To the sixth interrogatory he, answering, says: None.

To the seventh interrogatory he, answering, says: At the request of Johnson and some of his creditors, I, as agent for the complainants, was requested to attend a meeting of Johnson and his creditors shortly

before the public sale of the land in question, namely, August at such request, attended such meeting. I stated the consid the indebtedness of Johnson to the complainants, that it was loaned, mostly in coin; that the amount was four thousand dollars; that no part had been paid; that we had taken a mortgage on the premises; and that we could not enter into the arrangement which they proposed. The amount of the indebtedness, how it accrued, and what security was taken, was fully made known to them and their committee, as heretofore shown, and was undisputed.

105 To the eighth interrogatory he, answering, says: The said Test conveyed the premises in question to the complainant Willingham, in order to be relieved of the trust. I have looked diligently for that deed among my papers, where it ought to be, and cannot find it. No part of the debt has ever been paid or collected upon the consummation of the agreement between Johnson and his creditors. He abandoned his preëmption right to the lands sold.

JEFFERSON P. CASADY.

STATE OF IOWA, *County of Pottawatamie, ss:*

I, Samuel Jacobs, the commissioner named in annexed commission, hereby certify that, on the tenth day of April, 1866, at Council Bluffs, in said county and State, Jefferson P. Casady was by me first sworn to testify the truth, the whole truth, and nothing but the truth; that I then reduced his deposition to writing in his presence; that he then subscribed the same in my presence.

In witness whereof I have hereunto set my hand this 10th day of April, A. D. 1866.

SAM'L JACOBS,
Commissioner.

Commissioner's fees, $2 75; (paid by complainant.)

106 Know all men by these presents that we, Harrison Johnson, and Minerva Johnson, his wife, of the county of Douglas, and Territory of Nebraska, in consideration of the sum of five thousand and six hundred dollars in hand paid by James D. Test, of the county of Pottawatamie and State of Iowa, do hereby sell and convey unto the said James D. Test the following-described premises, situate in the county of Douglas and Territory of Nebraska, to wit: The northeast quar. of the southeast quar. and the southeast quar. of the northeast quar. of sec. No. twenty-one, (21,) in township No. fifteen (15) north, of range No. thirteen (13) east of the sixth P. M., containing eighty acres.

And we do hereby covenant with the said James D. Test that we are lawfully seized of said premises; that they are free from incumbrance, and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. And the said Minerva Johnson relinquishes her right of dower in and to the above-described premises.

107 In witness whereof we have hereunto set our hands this twenty-sixth day of June, A. D. 1857.

HARRISON JOHNSON.
MINERVA + JOHNSON.
mark.

Attest: J. SEELEY.

In witness whereof I have hereunto set my hand the day and year above named.

GEO. I. GILBERT,
Justice of the Peace.

Recorded book of deeds, page 619.

COUNTY CLERK'S OFFICE,
Douglas Co., Neb., ss:

I, Frank Murphy, co. cl'k in and for said county, do hereby certify that the foregoing platt of the Capitol addition to the city of Omaha is a full and correct copy from the records of said office.

Witness my hand and official seal this 7th day of April, A. D. 1866.

[L. S.] FRANK MURPHY,
County Clerk.

102 And thereupon afterwards, to wit, on the 3rd day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

Deposition of JEFFERSON P. CASADY, a witness produced, sworn, and examined by and on behalf of the complainants in a certain cause depending in the district court of the Territory of Nebraska for the first judicial district and county of Douglas, between James S. Easley and William W. Willingham, complainants, and Harrison Johnson and others, defendants, under and in pursuance of the commission and interrogatories hereto annexed.

JEFFERSON P. CASADY, being duly sworn, as hereinafter certified—

To the first interrogatory, answering says: Jefferson P. Casaday; thirty-six years; real estate agent; Council Bluffs, Iowa.

To the second interrogatory he, answering says: I have known
103 the complainants and defendants—Harrison Johnson and his wife, ten years; defendants Kellom and Chapman seven years; do not know the other defendants.

To the third interrogatory he, answering, says: I am agent for complainants, and have been since 1853.

To the fourth interrogatory he, answering, says: About the 26th of June, 1857, I, as agent for the complainants, loaned of their money in my hands for the purpose four thousand dollars to Harrison Johnson, at Council Bluffs, Iowa. I took as security his note for the amount, payable to the order of the complainants one year from date; also a deed made by him and his wife to James D. Test, which deed is hereto annexed, marked Exhibit "A." The lands conveyed in it had recently been preëmpted by Johnson from the United States. Said Test was my partner at the time, and we were both acting for the complainants in the transaction. He took the title in trust for the complainants, and as security for the money loaned.

104 To the fifth interrogatory he, answering, says: One year from its date. It was not paid at maturity; it was renewed by Johnson giving another note, with accumulated interest, and also interest to accrue during the next year, which is hereto annexed, marked Exhibit "B."

To the sixth interrogatory he, answering, says: None.

To the seventh interrogatory he, answering, says: At the request of Johnson and some of his creditors, I, as agent for the complainants, was requested to attend a meeting of Johnson and his creditors shortly

before the public sale of the land in question, namely, August, 1860. I, at such request, attended such meeting. I stated the consideration of the indebtedness of Johnson to the complainants, that it was for money loaned, mostly in coin; that the amount was four thousand dollars; that no part had been paid; that we had taken a mortgage on the premises; and that we could not enter into the arrangement which they proposed. The amount of the indebtedness, how it accrued, and what security was taken, was fully made known to them and their committee, as heretofore shown, and was undisputed.

105 To the eighth interrogatory he, answering, says: The said Test conveyed the premises in question to the complainant Willingham, in order to be relieved of the trust. I have looked diligently for that deed among my papers, where it ought to be, and cannot find it. No part of the debt has ever been paid or collected upon the consummation of the agreement between Johnson and his creditors. He abandoned his preëmption right to the lands sold.

JEFFERSON P. CASADY.

STATE OF IOWA, *County of Pottawatamie, ss:*

I, Samuel Jacobs, the commissioner named in annexed commission, hereby certify that, on the tenth day of April, 1866, at Council Bluffs, in said county and State, Jefferson P. Casady was by me first sworn to testify the truth, the whole truth, and nothing but the truth; that I then reduced his deposition to writing in his presence; that he then subscribed the same in my presence.

In witness whereof I have hereunto set my hand this 10th day of April, A. D. 1866.

SAM'L JACOBS,
Commissioner.

Commissioner's fees, $2 75; (paid by complainant.)

106 Know all men by these presents that we, Harrison Johnson, and Minerva Johnson, his wife, of the county of Douglas, and Territory of Nebraska, in consideration of the sum of five thousand and six hundred dollars in hand paid by James D. Test, of the county of Pottawatamie and State of Iowa, do hereby sell and convey unto the said James D. Test the following-described premises, situate in the county of Douglas and Territory of Nebraska, to wit: The northeast quar. of the southeast quar. and the southeast quar. of the northeast quar. of sec. No. twenty-one, (21,) in township No. fifteen (15) north, of range No. thirteen (13) east of the sixth P. M., containing eighty acres.

And we do hereby covenant with the said James D. Test that we are lawfully seized of said premises; that they are free from incumbrance, and do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. And the said Minerva Johnson relinquishes her right of dower in and to the above-described premises.

107 In witness whereof we have hereunto set our hands this twenty-sixth day of June, A. D. 1857.

HARRISON JOHNSON.
MINERVA + JOHNSON.
mark.

Attest: J. SEELEY.

TERRITORY OF NEBRASKA,
Douglas County, ss:

On this 28th day of June, A. D. 1857, personally appeared before me, a notary public in and for said county, Harrison Johnson, and Minerva, Johnson, his wife, personally known to me to be the identical persons whose names are affixed to the above conveyance as grantors, and acknowledged the execution of the same to be their voluntary act and deed for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand, at Omaha, this 28 day of June, A. D. 1857.

[L. S.] J. SEELEY.

Exhibit "A."

Harrison Johnson to James D. Test. Deed. Rec'd for record July 2nd, 1857, at 11 a. m., and recorded in book F, page 252. Fees, $1 25. Thomas O'Conner, co. register.

108 OMAHA CITY, N. T., *July* 9, 1850.

Twelve months after date I promise to pay to the order of Easley and Willingham the sum of sixty-eight hundred and twenty-one dollars, *with* value received, with interest at the rate of thirty per cent. per annum after maturity.

Payable at the office of—

HARRISON JOHNSON.

Payable in coin.

Exhibit "B."

Interrogatories to be propounded to Jefferson P. Casady, a witness to be produced, sworn, and examined under and in virtue of the commission hereto annexed, issued out of the district court in chancery of the Territory of Nebraska, for the first judicial district and county of Douglas, in a certain cause wherein James S. Easley and William W. Willingham are complainants, and Harrison Johnson, and Minerva, his wife, Sarah A. Johnson, John H. Kellom, James G. Chapman, and George Vail are defendants, on behalf of the said complainants.

109 First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either, and which of them? If so, how long have you known them, respectively, or such of them as you do know?

Third interrogatory. Do you occupy to the complainants any relation of trust and confidence? If yea, what is the same, and how long have you sustained such relation.

Fourth interrogatory. State whether or not the said complainants ever loaned to the defendant Harrison Johnson any money. If yea, when, where, how much; what, if any, security for the repayment thereof was taken, and who, if any one besides themselves, acted in the matter of said loan for said complainants.

Fifth interrogatory. When did the said note mature; and state whether or not the same was, at its maturity, paid. If nay, what further arrangement, if any, was made between you and said Johnson?

110 Sixth interrogatory. What other, if any other indebtedness, do you represent against said Johnson?

Seventh interrogatory. Do you know, if so. state what if any arrange-

ment was made by and between said Harrison Johnson and John H. Kellom, and other of said Johnson's creditors, about said lands.

Eighth interrogatory. Do you know any matter or thing touching the matters in question in this cause material to the interests of said complainants? If yea, declare the same as fully as if the same were here particularly inquired after.

269. In chancery. James S. Easley et. al. vs. Harrison Johnson et al. Interrogatories. J. M. Woolworth, sol. for complainants. Filed March 9th, 1866. W'm Kellogg, jr., clerk.

111 The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, Territory of Nebraska, Douglas County, to Samuel Jacobs, esquire, greeting:

Know you that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, Jefferson P. Casady, in a certain cause pending in this court, wherein James S. Easley and William W. Willingham are plaintiffs, and Harrison Johnson et al. are defendants, on oath, to be by you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

Witness the Hon. William Kellogg, judge of the district court of the first judicial district, at the city of Omaha, on the 21st day of March, A. D. 1866.

[L. S.] W'M KELLOGG, JR., *Register*.

112 On which said paper appears the following endorsement, in words and figures following, to wit:

No. 55. District court, Douglas County. James S Easley et al. vs. Harrison Johnson et al. Commission to take depositions. Filed July 3rd, 1867. E. B. Chandler, clerk.

And thereupon, afterward, to wit, on the 8th day of July, A. D. 1867, the following order was entered and appears of record in said cause, in words and figures following, to wit:

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM *vs.* HARRISON JOHNSON ET AL. } No. 55.

Ordered that the above-entitled cause be, and the same is hereby, removed from the district court of the State of Nebraska into the circuit court of the United States for the State of Nebraska, and that this order be entered as of the date of the 1st day of July, 1867.

113 And thereupon afterwards, to wit, on the 12 day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

At a circuit court of the United States for the district of Nebraska, held at the capitol, in the city of Omaha, on the 12 day of July, 1867. Present, Hon. James M. Love, judge, &c.

TERRITORY OF NEBRASKA,
Douglas County, ss:

On this 28th day of June, A. D. 1857, personally appeared before me, a notary public in and for said county, Harrison Johnson, and Minerva, Johnson, his wife, personally known to me to be the identical persons whose names are affixed to the above conveyance as grantors, and acknowledged the execution of the same to be their voluntary act and deed for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand, at Omaha, this 28 day of June, A. D. 1857.

[L. S.] J. SEELEY.

Exhibit "A."

Harrison Johnson to James D. Test. Deed. Rec'd for record July 2nd, 1857, at 11 a. m., and recorded in book F, page 252. Fees, $1 25. Thomas O'Conner, co. register.

108 OMAHA CITY, N. T., *July* 9, 1850.

Twelve months after date I promise to pay to the order of Easley and Willingham the sum of sixty-eight hundred and twenty-one dollars, *with* value received, with interest at the rate of thirty per cent. per annum after maturity.

Payable at the office of—

HARRISON JOHNSON.

Payable in coin.

Exhibit "B."

Interrogatories to be propounded to Jefferson P. Casady, a witness to be produced, sworn, and examined under and in virtue of the commission hereto annexed, issued out of the district court in chancery of the Territory of Nebraska, for the first judicial district and county of Douglas, in a certain cause wherein James S. Easley and William W. Willingham are complainants, and Harrison Johnson, and Minerva, his wife, Sarah A. Johnson, John H. Kellom, James G. Chapman, and George Vail are defendants, on behalf of the said complainants.

109 First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either, and which of them? If so, how long have you known them, respectively, or such of them as you do know?

Third interrogatory. Do you occupy to the complainants any relation of trust and confidence? If yea, what is the same, and how long have you sustained such relation.

Fourth interrogatory. State whether or not the said complainants ever loaned to the defendant Harrison Johnson any money. If yea, when, where, how much; what, if any, security for the repayment thereof was taken, and who, if any one besides themselves, acted in the matter of said loan for said complainants.

Fifth interrogatory. When did the said note mature; and state whether or not the same was, at its maturity, paid. If nay, what further arrangement, if any, was made between you and said Johnson?

110 Sixth interrogatory. What other, if any other indebtedness, do you represent against said Johnson?

Seventh interrogatory. Do you know, if so, state what if any arrange-

ment was made by and between said Harrison Johnson and John H. Kellom, and other of said Johnson's creditors, about said lands.

Eighth interrogatory. Do you know any matter or thing touching the matters in question in this cause material to the interests of said complainants? If yea, declare the same as fully as if the same were here particularly inquired after.

269. In chancery. James S. Easley et. al. vs. Harrison Johnson et al. Interrogatories. J. M. Woolworth, sol. for complainants. Filed March 9th, 1866. W'm Kellogg, jr., clerk.

111 The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, in chancery, Territory of Nebraska, Douglas County, to Samuel Jacobs, esquire, greeting:

Know you that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, Jefferson P. Casady, in a certain cause pending in this court, wherein James S. Easley and William W. Willingham are plaintiffs, and Harrison Johnson et al. are defendants, on oath, to be by you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

Witness the Hon. William Kellogg, judge of the district court of the first judicial district, at the city of Omaha, on the 21st day of March, A. D. 1866.

[L. S.] W'M KELLOGG, JR., *Register*.

112 On which said paper appears the following endorsement, in words and figures following, to wit:

No. 55. District court, Douglas County. James S Easley et al. vs. Harrison Johnson et al. Commission to take depositions. Filed July 3rd, 1867. E. B. Chandler, clerk.

And thereupon, afterward, to wit, on the 8th day of July, A. D. 1867, the following order was entered and appears of record in said cause, in words and figures following, to wit:

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM *vs.* HARRISON JOHNSON ET AL. } No. 55.

Ordered that the above-entitled cause be, and the same is hereby, removed from the district court of the State of Nebraska into the circuit court of the United States for the State of Nebraska, and that this order be entered as of the date of the 1st day of July, 1867.

113 And thereupon afterwards, to wit, on the 12 day of July, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

At a circuit court of the United States for the district of Nebraska, held at the capitol, in the city of Omaha, on the 12 day of July, 1867. Present, Hon. James M. Love, judge, &c.

WILLIAM W. WILLINGHAM AND JAMES S. Easley
vs.
HARRISON JOHNSON AND MINERVA, HIS WIFE; John H. Kellom, George Vail, James G. Chapman, impleaded with Sarah A. Johnson.

This cause came on to be heard upon the pleadings, proofs, and exhibits filed therein, and was argued by Mr. Woolworth, of counsel for complainants, and Mr. Gantt, of counsel for the defendants, and the court finds that said Harrison Johnson is indebted to said complainants, upon the mortgage note alleged, in the sum of twelve thousand two hundred and seventy-seven dollars and eighty cents; and the conveyance by him to James D. Test, alleged in said bill, was as a security for and operated as a mortgage of the premises therein mentioned.

That on the 18 day of August, 1860, said defendant Kellom
114 purchased from the United States a certain portion of said premises hereinafter particularly described, in trust for such creditors of said Johnson as should take parts thereof, proportioned to the amount of their respective debts against him in satisfaction of said debts, and for said Johnson as to such parts thereof, proportioned to the amount of the debt of any and all creditors who should not so do; that said Johnson is entitled to one undivided half of said premises, under the trust aforesaid, and said defendants now hold the same in trust for him, charged with the lien of the said complainants' said mortgage.

It is therefore ordered, adjudged, and decreed that Llewellyn Gynn, esquire, master of this court, sell the said premises, after giving four weeks' due notice of the time and place of such sale in a newspaper of general circulation in the county of Douglas, in the State of Nebraska; that such sale be held in said county, and that the parties to this suit or any of them may become the purchasers at such sale of said premises or any part thereof, and it is further ordered, adjudged, and decreed that the said master, after retaining his costs, disbursements, and commission arising on said sale out of the proceeds arising thereon,
115 pay to the solicitor for said complainants the costs of this suit to be taxed, and that out of the sum remaining in his hands thereafter, he pay to said complainants or their solicitor the sum so as aforesaid found to be due them, to wit, the sum of twelve thousand two hundred and seventy-seven dollars and eighty cents, or so much thereof as the said moneys will pay of the same, and bring the balance, if any remaining, into court, to abide its further order in the premises; and if the proceeds of said sale shall be insufficient to pay the said several sums, the said master is hereby ordered to report to the court the amount remaining unpaid, and the said master is ordered to take receipts of his disbursements, and the several payments so as aforesaid to be made by him, and file the same with his report of sale. And it is further ordered, adjudged, and decreed that said defendants, and each and every of them, and all persons claiming under them or either of them, by mortgage, judgment, or conveyance, be and they are forever, vacated and foreclosed of and from all right and equity of redemption in and to the premises and every part thereof. And it is further ordered, adjudged, and decreed that it the proceeds arising from said sale shall be insufficient to pay the said costs, expenses, and mortgage
116 debt that the complainants may have execution against said Harrison Johnson for such deficiency.

The premises hereby authorized to be sold by this decree, and herein-

before referred to, are known and described as follows, that is to say the undivided one-half of—

On which said paper appears the following endorsements, in words and figures following, to wit:

No. 55. U. S. circuit court, district of Nebraska. May adjourned term, 1867. W'm Willingham et al. vs. Harrison Johnson et al. Decree of sale. Filed and entered, page 59, July 12, 1867. E. B. Chandler, clerk; J. M. Love, judge.

117 And thereupon afterwards, to wit, on the 11th day of November, A. D. 1867, the following paper was entered, and appears of record in said cause, in words and figures following, to wit:

WILLIAM W. WILLINGHAM AND JAMES S. Easley
vs.
HARRISON JOHNSON AND MINERVA, HIS WIFE; John H. Kellom, George Vail, James G. Chapman, impleaded with Sarah A. Johnson.

To the Hon. James M. Love, judge of the circuit court in and for the district of Nebraska:

In pursuance and in virtue of a decretal order of this court, made in the above cause, by the judge, and bearing date the 12th day of July, in the year one thousand eight hundred and sixty-seven, by which it was among other things ordered, adjudged, and decreed that all and singular the mortgaged premises hereinafter described, or so much thereof as might be sufficient to raise the amount found due to the complainants therein mentioned, for principal and interest, and the costs in this case, be sold at public auction, by or under the direction of the
118 undersigned master of this court; that the undersigned master of this court give notice of the time and place of such sale, according to the course and practice of this court; or that the complainants, or any of the parties in this cause might become the purchaser; and that the said master pay to the said complainants, or their solicitor, out of the proceeds of the said sale, their costs in this suit, to be taxed, and also the amount so reported due as aforesaid, together with the legal interest thereon from the date of said decree, or so much thereof as the purchase-money of the mortgaged premises would pay of the same; and that the master take receipts for the amounts so paid, and file the same with this report; and that he bring the surplus money arising from the said sale, if any there should be, into court, to abide its further order. And whereby it was further ordered and decreed that, if the moneys arising from said sale should be insufficient to pay the amount so reported to be due to the complainants, with the interest and costs as aforesaid, that the said master specify the amount of such deficiency in his report of sale. I, the master of this court, do respectfully certify and report that, having been charged by the solicitor
119 for the complainants with the execution of the said decretal order, I advertised said premises to be sold by me at the east door of the capitol, in the city of Omaha, State of Nebraska, on the 23rd day of September, A. D. 1867; that, previous to said sale, I caused notice thereof to be publicly advertised for thirty successive days, by causing a copy of said notice to be printed once in each week during the five weeks immediately preceding said sale, in a public newspaper, the

Omaha Weekly Herald, printed in said county of Douglas, which notice contained a brief description of the said mortgaged premises.

And I do further report that on the said 23d day of September, in the year one thousand eight hundred and sixty-seven, the day on which the said premises were so advertised to be sold as aforesaid, I attended, at the time and place fixed for said sale, and exposed said premises for sale, at public auction, to the highest bidder, and the said premises were then and there fairly struck off as follows, to wit:

The undivided one-half of one hundred and seventy-five feet off of lot three, (3,) in the Capitol addition to the city of Omaha, State of Nebraska, to James M. Woolworth, for the sum of seven hundred
120 and fifty dollars ($750 00.) Also, lot numbered four, (4,) in the afore-mentioned addition, to James S. Easley, for the sum of eight hundred dollars ($800.) Also, lot five, (5,) in the above-mentioned addition to James S. Easley, for the sum of one thousand dollars ($1,000.) Also, lot numbered six, in the above-mentioned addition to James M. Woolworth, for the sum of two thousand dollars ($2,000;) they each, respectively, being the highest bidder therefor, and that being the highest sum bidden therefor.

I have paid to the solicitor for the complainants the sum of $45 50, being the amount of his costs of this suit as taxed, and have taken a receipt therefor, which is hereto annexed, marked "A."

I have also retained in my hands the sum of $48 30, being the amount of my fees, commissions, and disbursements on said sale, as will appear by reference to the statements of the items thereof annexed to this my report, and to which I refer. And I have paid to the solicitor for the complainant the sum of $4,456 20, and have taken a receipt therefor, which is hereto annexed, marked "C."

And I do further certify and report that the premises so sold and conveyed, as aforesaid, were described in said decretal order as follows,
121 viz: The undivided one-half of the southeast quarter of the northeast quarter of section twenty-one, (21,) township fifteen. (15,) range thirteen (13) east of the sixth (6th) principal meridian, being lots numbered four, (4,) five, (5,) and six, (6,) and one hundred and seventy-five feet off of the west side of lot three (3) in the Capitol addition to the city of Omaha, in the State of Nebraska.

LLEWELLYN GYNNE,
Master in Chancery.

OMAHA, NEB., *23d Sept'r*, 1867.

Received of Llewellyn Gynne, master in chancery of the U. S. circuit court for the dist. of Neb., in the suit of James S. Easley et al. vs. Harrison Johnson et al., the sum of four thousand four hundred and fifty-six dollars and twenty cents, the amount received upon the sale in said cause, less the cost and commissioner's fees.

J. M. WOOLWORTH,
Sol. for Complainants.

OMAHA, NEB., *Sept'r 23d*, 1867.

Received of Llewellyn Gynne, master in chancery for the U. S. circuit court, dis. of Neb., the sum of forty-five dollars and fifty cents,
122 the amount of cost in the case of James S. Easley et al. vs. Harrison Johnson et al.

J. M. WOOLWORTH,
Sol. for Compl'ts.

On which said paper appears the following endorsements, in words and figures following, to wit:

55. U. S. circuit court, dist. of Nebraska. James S. Easley et al. v. Harrison Johnson et al. Master commissioner's report of sale. Filed 11th Nov'r, 1867. E. B. Chandler, clerk.

123 And thereupon, afterwards, to wit, on the 9th day of November, A. D. 1867, the following paper was entered and appears of record in said cause in words and figures following, to wit:

In equity.

To the honorable the judge of the circuit court for the district of Nebraska:

The petition of John H. Kellom, James G. Chapman, George Vail, and Harrison Johnson respectfully showeth: That, on the second day of November, 1866, James S. Easley and William W. Willingham, filed in this honorable court, their bill of complaint against your petitioners, and one Sarah A. Johnson, (but as to said Sarah A. Johnson the said bill before the hearing of said cause was by said complainants dismissed,) stating in substance among other things that, on or about the 25th day of June, 1857, said complainants made a loan to said Harrison Johnson of $5,600, and to secure the payment thereof said Johnson gave his promissory note, and, together with his wife, conveyed to one James D. Test the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of sec. 21, in township 15 N., range 13 east, part of lands previously preëmpted by said Johnson; that a caveat was filed in the Land Department against the preëmption of said Johnson,
124 and was about to be dismissed and his entry sustained, when said Johnson withdrew his opposition to the proceedings thereon, and his entry was vacated; that said Test conveyed by deed said premises to William W. Willingham one of the complainants; that said Johnson and some of his creditors entered into some conspiracy to deprive said complainants of their lien on said premises, to have said entry of Johnson vacated, said lands restored to the public lands and a sale thereof at public auction, prevent others from bidding thereon, and not to compete together in bidding thereon and to bid said lands in and divide them among themselves; and that said lands were sold at public auction, and, in pursuance of such agreement, said Kellom bid in one-half of said lands in trust for himself and others, and said Johnson bid in the other half of said lands, but in the name of Sarah A. Johnson in trust for himself; that said Johnson and divers persons attended said sale in a body, and by threats prevented others from bidding; that, on the day before and morning of sale, said Johnson entered into an agreement with certain of his creditors in writing, that they should bid off and purchase said lands aforesaid and did so purchase the same; that said lands so bid in by said Kellom should be divided among the creditors of
125 Johnson in proportion to the amount of their respective debts against him, and those creditors who did not come in and take under said agreement that the portions of land falling to their respective debts be conveyed to said Johnson by said Kellom, and that Johnson should relinquish all claims by reason of his preëmption to the parcels of land so conveyed to such of his creditors as should come in and take under said agreement; that, for the lands so bid in by said Kellom and Johnson, the usual patent certificates were issued to them respectively, they having severally paid the prices bidden for the same; that

letters-patent of the United States have since been issued conveying to the said Kellom and Sarah A. Johnson, respectively, said lands; that creditors of Johnson holding debts against him to only one-half of his entire indebtedness came in under said agreement and he had required Kellom to convey to him such parts of said lands bid in by said Kellom as under said agreement would have fallen to such creditors as did not come in under the same, but said Kellom has refused; that said George Vail, James G. Chapman, and John H. Kellom claimed to own portions of the lands so conveyed to Test, and praying that your petitioners and said Sarah A. Johnson may make answer to said bill; that it be
126 decreed by the court your petitioners held said premises subject to the alleged lien and charge of said complainants thereon; that said premises be sold, and the proceeds arising on such sale be applied to the payments of the demands of said complainants, and your petitioners be bound and foreclosed of and from all equity of redemption in and to said premises and for general relief. And your petitioners further show that your petitioners John H. Kellom and James G. Chapman, on the 3d day of November, 1866, put in their joint and several answer to said bill of complainants, and said Harrison Johnson separately made answer thereto at another time, in which said answer it was in substance stated, that your petitioners answering as aforesaid, specially denied all the material matter and allegations of said complainants' said bill of complaint, except that it was admitted that said Harrison Johnson obtained a loan of one James D. Test, and when the same became due, said Johnson settled and paid the same; that said Johnson did file upon and by preëmption enter the lands in said bill mentioned and the same was vacated, but said Kellom and Chapman denied said Johnson made said entry in good faith, and charged that, on information, they believe
127 the same to have been made in fraud of the act of Congress; that the entry of said Johnson was vacated by the decision of the Land Department; that, on or about the 18th day of August, 1860, said Kellom bid in and purchased from the United States the southeast quarter of the northeast quarter of section 21, and the southwest quarter of the northwest quarter of section 22, in township 15, range 13 east; to which said several answers said complainants replied, and that issue having been joined and the said cause having been heard before this honorable court on the day of July, 1867, in substance declared said Johnson was indebted to said complainants in the sum of $12,277 80; that the alleged conveyance to Test was a security and operated as a mortgage of the premises; that, on the 18th August, 1860, Kellom purchased from the United States a portion of the premises in trust for such creditors of Johnson as should take part thereof proportioned to their relative debts, and for said Johnson as to such parts proportioned to the debts of creditors who should not do so; that Johnson was entitled to one-half of the premises, and that said defendants held the same in trust for him charged with the lien of complainants and decreed that said premises be sold and the proceeds arising from such sale be applied to
128 the payment of costs of suit and the sum found due the complainants, or so much thereof as said moneys would pay, and if not sufficient to pay said several sums the said complainants might have execution against said Johnson for the deficiency; and that your petitioners be bound and foreclosed from all equity of redemption in and to said premises, and describing said premises authorized to be sold as the undivided half of the southeast quarter of the southeast quarter of section 21 aforesaid, being lots, four, five, and six, and 175 feet of the west side of lot three in Capitol addition to the city of Omaha.

And your petitioners are advised that there is error in law in said decree in this, that is to say, that the honorable court declares that, under the pleadings in this cause, the said deed of conveyance by said Johnson to said Test in said bill and decree mentioned, was a security and operated as a mortgage of the premises; that said Johnson had such title and interest in and to said lands in said bill and decree mentioned, as to give him a valid right to occupy the same and vest the same in his vendee; and that the alleged agreement in *in* said bill and decree mentioned was in law valid and effective, and subject to be enforced, as between said parties; in consideration whereof your petitioners are advised that said decree ought to be reviewed.

129 And your petitioners further show unto your honor that, since the decree aforesaid was so made, that is to say, about the first of the month of August, 1867, they discovered new and material evidence in favor of the defendants in said cause, which evidence they are advised and believe will constitute a good defence to the complainants' alleged claim in said cause and *and* their said bill of complaint stated; that said evidence consists in the discovery of a true copy of the original agreement alleged in said bill of complaint; that neither said original agreement nor a copy thereof was produced on the hearing of said cause, but some parol evidence was offered on the part of said complainants as the terms, nature, and condition of said agreement; that your petitioners, not being able, before the hearing of said cause, to find the original agreement, or a copy thereof, the said cause was heard upon such proofs as were offered; that, before the hearing of said cause, your petitioners, so far as it was in their power, made diligent inquiry for and search after said agreement, inquiring of persons whom they considered might have or know the whereabouts of the same, and were unable to find the original or a copy thereof, and that they did not know until the decision thereof as aforesaid such copy of said agreement was made by any

130 person; that said agreement was made some time in the month of August, 1860, and ever since about that year has not been seen by, or its whereabouts known to, any of your petitioners, although your petitioner, John H. Kellom, being unable, from the long lapse of time before the hearing of said cause, to state or testify with certainty as to the terms, nature, and condition of said agreement, yet, by the discovery and reading thereof aforesaid, his recollection thereof has thereby been refreshed, and he now verily believes said copy so discovered to be a true and correct copy of the original agreement. And your petitioners further show that, in another action between Caleb Baldwin, ex'c't'r of John B. Beers, dec'd, and others, complainants, and your petitioners, Kellom and Johnson and others, defendants, of which the deposition on commission of William F. Sapp, esq., has been taken since the discovery of the copy aforesaid, the said copy of said agreement is attached to his deposition as an exhibit, and said W. F. Sapp verified, in his deposition, that he made said copy from the original agreement in his own handwriting, and *and* the same is a true copy thereof, and that he knows not with certainty to whom he delivered the original agreement; and your petitioners crave leave to refer to the said deposition of W. F. Sapp, where said matters fully appear; and your petitioners show unto your honor that, in and by said agreement,

131 said Harrison Johnson, for the purpose of settling and compounding with certain of his creditors, and of keeping them , so far as he was able to do, and for the purpose of obtaining from said creditors full release from further liability to them, it was mutually agreed between said creditors of said Johnson, whose names are subscribed to

said agreement, and the said Johnson, as in said agreement is stipulated, and that the benefits in said agreement were limited to said Johnson and said creditors only who signed said agreement, and did not extend to nor include any other of the creditors of said Johnson, whose names were not subscribed to the same; and that whereas, by reason of the loss of and the inability of your petitioners to procure said agreement, or a true copy thereof, on the hearing of said cause, the said decree was made upon the preëemption on parol proofs offered; that all the creditors of said Johnson were to come in and take lands under said agreement, and that, upon failure of any of said creditors so to come in and take lands, such portions of said lands, proportioned to the respective debts of said creditors so in default should revert and go to said Johnson; and that, by reason of the premises, the time, terms, nature, and conditions of said agreement were not known to this court at
132 the hearing of said cause, and your petitioners were greatly aggrieved and injured.

Your petitioners therefore pray that leave may be granted to them to file a bill of review against the said James S. Easley and William W. Willingham, with proper allegations, setting forth at large the facts and matters hereintofore stated, with all necessary and incidental matters, and all proper interrogatories adapted thereto, and with such prayer of relief in the premises as the case may require.

And your petitioners will ever pray, &c.

DANIEL GANTT,
Solicitor and of Counsel for Petitioners.

DISTRICT OF NEBRASKA, *ss:*

John H. Kellom, being duly sworn, says he is one of the petitioners in the above petition; that he has heard the same read, and knows the contents thereof, and that of his own knowledge all the matters & things & facts stated in said pe'tion are true, except as to those stated on advice and information, and as to those he verily believes they are true.

JOHN H. KELLOM.

Subscribed in my presence, and sworn to before me, this 9th day of November, 1867.

E. B. CHANDLER,
Clerk.

On which said paper appears the following endorsements in words and figures following, to wit:

No. 55. In U. S. circuit court. John H. Kellom et al. vs. Easley and Willingham. Petition for leave to file bill of review. Filed November 9th, 1867. E. B. Chandler, clerk.

133 And thereupon afterwards, to wit, on the 11th day of November, A. D. 1867, the following order was entered, and appears of record in said cause in words and figures following, to wit:

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM
vs.
HARRISON JOHNSON, JOHN H. KELLOM, AND others.
} In equity.

In the matter of the petition of John H. Kellom, James G. Chapman George Vail, and Harrison Johnson, against said James S. Easley William W. Willingham, praying leave to file their bill of review in the above-entitled cause.

And now, November 11, 1867, this cause came on this day to be heard upon the said petition, wherein said petitioners prayed leave to file their bill of review; and, upon the affidavits therein filed, and the same having been read to the court, and also upon hearing the arguments and allegations of the counsel of the respective parties, the court, upon due consideration of the matter, and being fully advised in the premises, is satisfied from the matters and facts set forth and stated in said petition and affidavits therein filed, that said petitioners, John H. Kellom, James G. Chapman, George Vail, and Harrison Johnson ought to be per-
134 mitted to file their bill of review in said cause, wherein said James S. Easley and William W. Willingham are plaintiffs, and your petitioners are defendants.

It is therefore ordered that said petitioners do have leave to file in this court in said cause their bill of review against said James S. Easley and William W. Willingham, with proper allegations, setting forth at large the facts *said* matters in said petition stated, with all necessary and incidental matters and all proper interrogatories adapted thereto, and with such prayer for relief in the premises as the case may require. And it is further ordered that said petitioners have seven days' time from the making of this order to file said bill of review, but upon condition of payment of all the costs to the time of filing petition for bill of review.

135 And thereupon afterwards, to wit, on the 12th day of November, A. D. 1867, the following paper was entered and appears of record in said cause in words and figures following, to wit:

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM
vs.
HARRISON JOHNSON, JOHN H. KELLOM AND others.
} In equity.

In the matter of the petition of John H. Kellom, James G. Chapman, George Vail, and Harrison Johnson, against James S. Easley and William W. Willingham, praying leave to file their bill of review in the above entitled cause.

And now, Nov. 11, 1867, this cause came on this day to be heard upon the said petition, wherein said petitioners prayed leave to file their bill of review; and, upon the affidavits therein filed, and the same having been read to the court, and also upon hearing the arguments and allegations of the counsel of the respective parties, the court, upon due consideration of the matter, and being fully advised in the premises,
136 is satisfied from the matters and facts set forth and stated in said petition and affidavits therein filed, that said petitioners, John H. Kellom, James G. Chapman, George Vail, and Harrison Johnson ought to be permitted to file their bill of review in said cause, wherein said James S. Easley and William W. Willingham are plaintiffs, and your petitioners are defendants. It is therefore ordered that said petitioners do have leave to file in this court in said cause their bill of

review against said James S. Easley and William W. Willingham, with proper allegations, setting forth always the facts and matters in said petition stated, with all necessary and incidental matters and all proper interrogatories adapted thereto, and with such prayer for relief in the premises as the cause may require. And it is further ordered that said petitioners have seven days' time from the making of this order to file said bill of review, but upon condition of payment of all the costs to the time of filing petition for bill of review.

On which said paper appear' the following endorsement in words and figures following, to wit:

137 55. Easley et al. vs. Johnson et al. Entry. Filed Nov. 12th, 1867. E. B. Chandler, clerk.

138 And thereupon, afterwards, to wit, on the 18th day of November, A. D. 1867, the following paper was entered, and appears of record in said cause in words and figures following, to wit:

In equity.

To the honorable the judge of the circuit court of the United States for the district of Nebraska.

Humbly complaining shows unto your honor your orators, John H. Kellom, Harrison Johnson, and James G. Chapman, citizens of the United States, and residents of the State of Nebraska, and George Vail, a citizen of the United States, and resident of the State of New Jersey, that, on the second day of November, 1866, James S. Easley and William W. Willingham, citizens of the United States, and residents of the State of Virginia, exhibited their bill of complaint in this honorable court against your orators John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail, with whom also was impleaded in said bill one Sarah A. Johnson, but as to said Sarah A. Johnson said bill of complaint was, by said complainants therein, before the hearing thereof, dismissed, setting forth in said bill of complaint that, on or about the

139 25th day of June, 1857, said Harrison Johnson, having then recently purchased from the United States, by prëemption, the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section twenty-one; and the southwest quarter of the northwest quarter of section twenty-two, in township fifteen north, of range thirteen east of the sixth principal meridian, applied to said Easley and Willingham to advance him the sum of five thousand and six hundred dollars, and proposed, in order to secure said sum of money, to convey to such person as said Easley and Willingham should for that purpose appoint, a portion of said premises, namely, the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section twenty-one aforesaid; that said Easley and Willingham complied with said request of said Johnson, and advanced to him the said sum of $5,600, and that to secure the payment thereof said Johnson gave to them his promissory note of date aforesaid, for said sum, payable twelve months after date, and also, together with his wife, Minerva, conveyed by deed to James W. Test, who was appointed for that purpose, the premises last above described, with covenants of seizure, and that said premises

140 were free from all incumbrance, and that they would defend the same against the lawful claims of all persons; that the said note having become due, and said Johnson having made default of payment,

the same was, on or about the ninth day of July, 1858, renewed, and payment thereof extended for a further time of one year; and, in consideration thereof, said Johnson made and delivered to the said Easley and Willingham, his certain other promissory note of date last aforesaid, promising, twelve months after date, to pay to the order of said Easley and Willingham the sum of $6,821, with interest, after maturity, at the rate of thirty per cent. per annum; and that it was agreed, between said Johnson and said Easley and Willingham, said premises should stand as a security for the payment of said note; that said Test, by his deed duly executed, conveyed said premises to said Willingham; that no part of said note had been paid, nor proceedings had at law for the recovery of the same, and that the whole principal thereof and interest thereon, remained due and owing to said Easley and Willingham that, shortly after the making of the first above-mentioned note and deed, said
141 Johnson conveyed the remaining portion of the first described premises to persons unknown to said Easley and Willingham, by way of mortgage, to secure the payment of a sum equal to the full value of the premises, so by him mortgaged, and that large judgments were recovered against him in the courts, which became liens on the premises first described, subject to the incumbrance and charge of said Easley and Willingham, and that said Johnson was hopelessly insolvent, without means to pay the debt of said Easley and Willingham; that, shortly after said Johnson preëmpted the premises first above described, some evil disposed person or party, to said Easley and Willingham unknown, exhibited, in the Land Department of the Government, a caveat against said preëmption, and that such proceedings were had in said Department thereon that said Johnson's right to preëmpt said lands was about to be sustained and said caveat dismissed, when said Johnson and divers of his judgment creditors, for the purpose depriving said Easley and Willingham of their lien on said premises, held by the aforesaid note and conveyance, and of having said premises to their use free and divested thereof, entered into some conspiracy, the exact nature whereof to said Easley and Willingham was unknown, save
142 that it was between them and said Johnson agreed that said Johnson should withdraw his opposition to the proceedings aforesaid then had and pending in the Land Department; should procure said preëmption to be vacated, and said premises restored to the public lands, and a sale thereof, by public auction, by the officers of the land office of the United States for the Omaha land district in which said lands were situated; and at such sale, by such means as the occasion should require, hinder and prevent all others from purchasing or bidding for said and themselves and none of them should compete together in bidding upon said premises at said sale; that said lands were of the value of about twenty-five dollars per acre, and that they would bid the same in at the minimum price fixed by the Government, namely, one dollar and twenty-five cents per acre, and in a manner and proportions unknown to the said Easley and Willingham, would divide said premises among themselves, and that said judgment creditors would release their several debts, liens, judgments, and securities held against said Johnson; that, in pursuance of such agreement, Johnson withdrew his opposition in the Land Department to said proceedings to vacate
143 his entry, by reason whereof said entry was vacated, and the said lands were ordered to be, and were, advertised to be sold at public auction at the land office in Omaha, on the 18th day of August, 1860; that *that* shortly prior to the time of sale, Johnson and divers of his friends, acting on his behalf and at his instance, industriously circulated

throughout said city the report that said premises were to be bid in at said sale for his benefit, to preserve to him and his family his homestead and improvements made by him on said premises, and to pay off and satisfy his debts which were heavily pressing him; that, in order, by intimidation and threats, to prevent others from bidding for said premises at said sale, Johnson and divers persons on his behalf attended said sale in a body, and bid heavier, and prevented, by threats of violence, persons from bidding at said sale, who proposed and otherwise would have bidden at said sale; that, on the day before and the morning fixed and advertised for said sale, said Johnson entered into an agreement, in writing, with certain of *of* his creditors of the purport and to the effect that he should, without competition, bid off and purchase at the minimum price allowed by law in that behalf at said sale, one half of said lands, that is to say,

144 and hold the same discharged of all claims of his creditors thereon, and that John H. Kellom should bid off and purchase at said sale without competition and at the minimum price allowed by law in that behalf the other one-half of said lands; that is to say, ; that these persons mentioned in said agreement should act as an arbitrary committee to determine the validity of the debts of such creditors as should come in under said agreement, and the amount thereof, taken at the original consideration, with interest at ten per cent. per annum, and divide the last-mentioned lands among said creditors' debts, assigning to each a part of said lands proportioned to the amount thereof, and if *if* any creditors did not come in, and did not take under said agreement, and discharge his debt, that portion of said land falling to his debt should be conveyed to said Johnson by said Kellom, and that Johnson, in consideration thereof, should relinquish all claim on his part, and by reason of his aforesaid entry of said lands, to the parcel of lands to be so as aforesaid conveyed to such of said creditors as shall come in take under said agreement; that said Johnson did bid on the part of the prem-
145 ises; it was stipulated he should purchase at the minimum price, no one bidding or attempting to bid thereon against him, and that John H. Kellom, in his own name, but in fact in interest for said creditors and said Johnson, and under and in pursuance of said agreement, bid in the remaining portion of said land, the said Johnson neither bidding nor attempting to bid thereon against him, said Kellom; that said Kellom and said Johnson each paid to the officers of the land office the sum by them respectively bid on for said premises, and that said officers issued to them respectively the usual certificate for said premises, and that recently the usual letters-patent of the United States, conveying to them the fee of said lands, have been issued to them respectively; that, in pursuance of said agreement, Johnson relinquished all claim to the lands purchased by said Kellom; that the creditors of Johnson holding debts against him to the amount of only one-half of his estate indebtedness came under said agreement, and he had required, and still requires, said Kellom to convey to him such parts of said lands as under said agreement would have fallen to such of his creditors
146 as decline to come in under the same and *they* claimed the benefit thereof; that said Kellom had utterly refused, and still refuses, so to do, although the debts of said creditors were submitted to said committee mentioned in said agreement, and the amount thereof duly adjusted, the validity and amount thereof made known to and acknowledged by the said creditors who, and those who, came in under said agreement; that the certificate issued to said Johnson, and also the letters-

patent, were *were* made to and in the name of Sarah A. Johnson, his mother, and charges and avers that Harrison Johnson paid for the premises therein described from his own means, and ever since the date thereof has, in the same manner as he did before, live upon and cultivate and claim to own, deal with, and use said premises as his own; that he has maintained and supported his mother a part of the time at his house on said premises, and a part of the time on other lands in which he had an interest, and charges and insists that said premises were in
147 fact sold to him, and the title taken in the name of Sarah A. Johnson, in order to protect the same from the claim and lien of said Easley and Willingham; that George Vail, James G. Chapman, and Kellom, claim to own portions of the land conveyed to the aforesaid Test, in trust for said Easley and Willingham, and claim the same by virture of divers conveyances made by said Kellom; but at the several times at which they acquired such interests they had full notice of all the matters and things in said bill stated and charged; that the matters and things stated in said bill and charges, on information, was derived from divers persons, and believed to be true; that said Easley and Willingham have frequently applied to said Johnson, in a friendly manner, requesting him to pay the aforesaid sum of money, and still hoped he would have complied with such request, or that the said Sarah A. Johnson, John H. Kellom, George Vail, and James G. Chapman would have applied said premises to that purpose, and that said bill of complaint proves that the said Sarah A. Johnson, Harrison Johnson, John H. Kellom, George Vail, and James G. Chapman may answer the same, but not under oath, their answer under oath being waived,
148 and that be by said court declared that the said parties, and each of them, hold the premises, subject to the lien and charge of said Easley and Willingham thereon, and that it be decreed that said premises be sold, and the proceeds arising on said sale be applied to the payment of said demand, both principal and interest, and that said Harrison Johnson, and Minerva, his wife, Sarah A. Johnson, John H. Kellom, George Vail, and James G. Chapman, and each of them, be foreclosed of and from all equity of redemption in said premises, and for such other relief as the circumstances of the case require, and to the court should seem to be equitable.

And your orators further show unto your honor that your orator, George Vail, made no answer to said bill of complaint, he being a non-resident of the State of Nebraska, and notice of the pendency of said bill was served upon him alone by publication in a newspaper, and that said Vail never had personal notice or service of process upon him of the pendency of said bill and the proceedings had thereon.

And your orators further show unto your honor that your orators,
149 John H. Kellom, and James G. Chapman, being served with process for that purpose, appeared on the 3rd day of November, 1866, and put in and filed their joint and several answer to the said bill of complaint to the effect following, that is to say, that, reserving unto themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, answering, den*ies* each and every allegation and charge in said bill, except such as in said answer were expressly admitted; that they denied that Harrison Johnson applied to Easley and Willingham or either of them, to borrow the money in said bill mentioned, or that said Johnson executed a conveyance of the premises described in said bill for the benefit of said Easley and Willingham; that they *they* were informed, and believed it to be true, that,

on or about the date in the bill mentioned, Johnson obtained from said Test the money mentioned in said bill, and gave to said Test his note therefor, and fully paid the same when it became due, and that said note was surrendered up to said Johnson; that they denied that
150 said James D. Test was appointed to receive a conveyance from said Johnson as charged in said bill, or that said Johnson executed and delivered a second note to said Test, or said Easley and Willingham, or that there was any understanding or agreement between said Johnson and said Easley and Willingham, that the premises should stand and remain as security for the payment of a note as charged in the bill; that they denied said Johnson was indebted to said Easley and Willingham as alleged in said bill; that they or either of them, to the knowledge of the other, did not know and were not informed as to whether said Johnson conveyed, by way of mortgage, the premises, or whether there were large judgments against said Johnson, or said Johnson was insolvent, and therefore denied each allegation thereof; that they believed said Johnson did, about the time mentioned in said bill, file upon and claim the land described in said bill under the provisions of the preëmption laws, and afterward preëmpted said lands, but severally denied that the preëmption made by him was bona fide; that they were informed, and believed it to be true, and charged the truth to be
151 that said Johnson fraudulently preëmpted said lands for the sole purpose of speculation, and that, in order to carry out the fraudulent purpose aforesaid, said Johnson before preëmpting said lands, did, by deed, sell portions of the same to divers parties in fraud of said act of Congress; that they admitted that some time after said Johnson preëmpted said lands, a caveat was filed in the Land Department to vacate said entry, but that they denied that said caveat was exhibited in said Land Department by some evil-disposed person or party, or that such proceedings were had that said Johnson's right to preëmpt said land was about to be sustained and said caveat dismissed, or that said Johnson and divers of his creditors, for the purpose of depriving said Easley and Willingham of any right, entered into a conspiracy, as alleged in said bill, or that it was agreed the said Johnson should withdraw his opposition to the proceedings on said caveat, or that Johnson should procure his preëmption to be vacated, and the premises restored to the body of the public lands to be sold at auction; and that they denied the agreement alleged in said bill to hinder and prevent persons from bidding on said lands, or that said premises were to be divided in
152 certain proportions between said Johnson and his judgment creditors, or that said Johnson's judgment creditors were to release their several debts held by them against him; that they were severally informed, and believed it to be true, and charged the truth to be, that said caveat, and the proofs offered in evidence before the officers of the Land Department, did fully show the preëmption of said lands by said Johnson was fraudulent, for the purpose of speculation, and in fraud of the act of Congress, and that said preëmption was so fraudulently made by said Johnson, and that said lands were and are within the corporate limits of the city of Omaha, and not subject to preëmption; that the city of Omaha in good faith filed said caveat, and conducted all the proceedings thereon before the Land Department to a final decision before the proper officers thereof, and that by said final decision, said preëmption of said Johnson was vacated and declared null and void, and the said lands were then restored to the body of the public lands, in order that the same might be sold at public auction; and that they were informed, and believe it to be true, that said Johnson defended his

153 said preëmption right to the said lands in the proceedings upon said caveat and proofs offered, and spent large sums of money in his defense of the matter, and that a fair and full hearing of the parties ligitant was had in the matter; that they were advised that said caveat, proofs, and matters so litigated, prosecuted, and defended, are matters which exclusively belong to said Land Department for determination, and submitted to the court as part of their answer, whether the same matter ought again to be called in question in said court; that they denied all and each allegation in said bill in regard to an agreement between said Johnson and his creditors to bid off at the public sale said lands at the minimum price, or that three persons were to act as an arbitrary committee for the purposes in said bill alleged; or that any lands purchased at said sale were to be conveyed or revert to said Johnson; or that said Johnson was relinquish any claim by reason of his preëmption of said lands; and that they denied that parcels or portions of the land purchased by Kellom at said sale, was to be conveyed to said Johnson, or that the claims of the creditors of Johnson were submitted to, or adjusted by a committee, or that the validity and

154 amount of any such adjustment was known to or acknowledged by Johnson's creditors; that they denied said Johnson withdrew his opposition to the caveat and proceedings to vacate his preëmption, or that Johnson and his judgment creditors, shortly prior to the sale of the lands, circulated a report that said lands were to be bid in at said sale to preserve to said Johnson and his family a homestead, or that by intimidation and threats others were prevented from bidding for said lands, or that Johnson and his creditors attended said sale in a body, and did hinder and prevent persons from bidding, or that there was conspiracy between said Johnson and his creditors in regard to said premises in any manner whatever, but that the sale of said lands, on the 18th day of August, 1860, was regular, open, and free to all persons without hindrance, threats, or intimidation; that said John H. Kellom, at said sale bid, in his own name and for his own purposes, purchase the southeast quarter of the northwest quarter of section twenty-one, and the southwest quarter of the northwest quarter of section twenty-two, in township fifteen north, range thirteen east, and paid the

155 proper officers of the Land Department the purchase-money and price bid for the same; that as to whether or not said Harrison Johnson or said Sarah A. Johnson, or either of them, or the one of interest for the other, purchased a portion of the premises, they were not advised, and therefore denied said allegations of the bill in that regard, and denied that they had any notice of all or any of the matters and things in the said bill alleged; that there was no patent issued by the United States to said Harrison Johnson to or upon the preëmption of said premises in the bill mentioned, and therefore they severally submitted and insisted that said Harrison Johnson had no power as was alleged in said bill, and that if such conveyance was ever made by said Johnson, the same was null and void under the provisions of the act of Congress, approved September 4th, 1841, and that they denied all manner of combination and confederacy wherewith they were charged in said bill, without this, that any matter, cause, or thing in said bill contained is true. And that said Harrison Johnson put in and filed his separate answer in said cause, wherein he, said Johnson, did, in sub-

156 stance, specially deny all and each of the material matters and allegations stated and alleged in said bill of complaint, except that it was admitted that he obtained a loan from said James D. Test, and when the same became due, he settled and paid the same; that he

did file upon, and, by preemption, enter the lands in said bill mentioned. And that said defendants, Easley and Willingham, replied to the said answer; and issue having been joined, and witnesses having been examined in said cause, that the said cause came on to be heard, on the twelfth day of July, 1867, when, upon debate of the matters, and hearing the proofs taken in the cause read, and what was alleged by counsel on both sides, the court declared that the said Harrison Johnson was indebted to the said Easley and Willingham upon the mortgage note in the sum of twelve thousand two hundred and seventy-seven dollars and eighty cents, and that the conveyance by him to Test, alleged in said bill, was a security for and executed as a mortgage of the premises therein mentioned; that, on the 18th day of August, 1860, Kellom purchased
from the United States a certain portion of said premises therein
157 described, in trust for such creditors of said Johnson as should take
parts thereof proportional to the amount of their respective debts against him in satisfaction of such debts, and for said Johnson as to such parts thereof, proportioned to the amount of the debts of any and all creditors who should not do so; that said Johnson was entitled to one undivided half of the premises under the trust aforesaid, and that said defendants held the same in trust for him charged with the lien of the mortgage of said Easley and Willingham, and therefore ordered, adjudged, and decreed that Llewelleyn Gwynn, master of said court, sell said premises after giving four weeks' previous notice of the time and place of such sale in a newspaper of general circulation, in the county of Douglas, in the State of Nebraska; that such sale be held in said county, and the parties to said suit or any of them may become purchasers at such sale of the premises or any part thereof; and further ordered and decreed that said master, after retaining his costs, disbursements, and commissions arising on said sale out of the proceeds thereof,
pay to the solicitor said Easley and Willingham's costs of suit to *to*
158 be taxed, and out of the sums remaining in his hands, he pay to
the said Easley and Willingham or their solicitor, the sum found due to them, to wit, $12,277 80, or as much thereof as said moneys would pay of the same, and bring the balance, if any, into court to abide its further order in the premises; and that if the proceeds should not be sufficient to pay said several sums, the said master was ordered to report to the court the amount remaining unpaid, and said master was directed to take receipts of his disbursements, and the several payments to be made by him, and file the same with his report of sale; and it was further ordered, adjudged, and decreed that said defendants, and each of them, and all persons claiming under them, or either of them, by mortgage, judgment, or conveyance, be forever bound and protected of and from all rights and equity of redemption in and to the premises and every part thereof; and it was further ordered and decreed that if the proceeds arising from said sale shall not be sufficient to pay the said costs, expenses, and mortgage debt, that the said Easley and Willingham may have execution against said Harrison Johnson for said
159 deficiency. The premises hereby authorized to be sold by this
decree, and hereinbefore referred to, are known and described as follows, that is to say, the undivided one-half of—

And your orators show unto your honor that said decree so recited as aforesaid, and enrolled by the signing of the same by the judge of said court, and filed on the twelfth day of July, one thousand eight hundred and sixty-seven, does not in any manner contain a description of, and set forth therein, by metes and bounds, legal subdivisions of Government surveys, or otherwise, any

tract or part or parcels of land to be sold, as, by the said bill of complaint, answer, decree, and other proceedings now remaining as of record in this honorable court, reference being thereunto had, will appear.

And your orators further show unto your honor that they are advised that the aforesaid decree, bearing date the twelfth day of July, 1867, is erroneous, and ought to be reviewed, reversed, and set aside; for that it appears by said decree this honorable court declared that, under the pleadings in this cause, the said deed of conveyance from said
160 Harrison Johnson to said James D. Test, in said bill and decree mentioned, was a security for, and operated as, a mortgage of the premises therein mentioned; that said Johnson had such title and interest in and to said lands in said bill and decree mentioned as to give him a valid right to convey the same, and vest a valid right and interest in and to said lands in his vendee; that the alleged agreement in the said bill and decree mentioned and alleged, was, in law, valid and effective, and subject to be enforced by law as between said parties, and that the said decree is so materially defective in not describing therein any tract or tracts, or parcel or parcels, of land to be sold by virtue thereof, as renders the same ineffectual and wholly void; and in consideration whereof, and inasmuch as said errors and imperfections appear in the body of said decree, as enrolled, your orators hope that the said decree will be reversed and set aside; and also for that the residue of said decree is consequently erroneous. Therefore, your orators do humbly insist that said bill of complaint ought to have been dismissed out of this honorable court.

And your orators further show unto your honor, by leave of
161 this honorable court first had and obtained for that purpose, that, since the hearing of said cause and said decree was so made and rendered as aforesaid, that is to say, on or about the first of August, in the year one thousand eight hundred and sixty-seven, your orators, for the first time, received new matter, relevant and material, as evidence to the issue joined in said cause, and which, if the same had been before this honorable court on the hearing of said cause, might, and your orators are advised and have good reason to believe would, have occasioned a different decision in said cause, that is to say, the dismissal of said bill of complaint out of this honorable court. And your orators show that said new matter of evidence consists of the discovery of a true copy of the original agreement, referred to in said bill of complaint, between said Harrison Johnson and certain of his creditors, and neither said original agreement, nor a copy thereof, was produced on the hearing of said cause, and that your orators, not being able before the hearing of said cause to discover the original agreement aforesaid, or a copy thereof, the said cause was heard upon such parol proofs as
162 were offered; and your orators show that, before the hearing of said cause, they, so far as it was in their power, made diligent inquiry for, and search after, said agreement, inquiring of persons whom they considered might have or give some information which would lead to the discovery of said agreement, and were unable to find such agreement; and that they did not know until the discovery thereof at the time aforesaid, a true copy of said agreement had been made by any person; that said agreement was made *and* some time in the month of August, 1860, and since about that time has not been seen by your orators; and your orators show that, in another suit depending in this honorable court, between Caleb Baldwin, executor of the last will of John B. Beers, deceased, and others, plaintiffs, and your orators, John

H. Kellom, Harrison Johnson, and other defendants, the deposition of William F. Sapp, was, since the discovery of the copy aforementioned of said agreement, taken on commission the said last-mentioned cause, and therein said W. F. Sapp testified that he made said copy from said agreement between said Johnson and certain of his creditors, in
163 his own handwriting, and that the same is a true copy thereof, and is attached as an exhibit to his said deposition, and your orators hereby crave leave to refer to said deposition of said W. F. Sapp, and the copy of said agreement attached thereto, as the said matters will there more fully appear. And your orators show unto your honor that by reason of the absence of and *invalidity* of your orators to produce said agreement aforementioned, or a true copy thereof, on the hearing of said cause between said Easley and Willingham, plaintiffs, and your orators, the said deed so rendered in said cause was made upon the presumption from parol proofs that all the creditors of said Harrison Johnson were to come in and take lands under said agreement, and that upon failure of any creditor or creditors, to so come in and take lands, such portions of said lands proportioned to the debts of such creditor or creditors, so in default, should revert and go to said Johnson; whereas, by the terms and stipulations of said agreement, the benefits thereof were limited to the said Johnson, and such only of his creditors whose names are subscribed to the same, and did not extend to nor include any other of the creditors of said Johnson, and
164 your orators show that said agreement is in words following, to wit:

"Whereas Harrison Johnson, of the county of Douglas, N. T., is indebted to divers persons in various large sums of money, and is unable to pay the full amount thereof:

"Now, therefore, for the purpose of settling and compromising with certain of his creditors, and of paying them so far as he is able to do, and for the purpose of obtaining from the said creditors a full release and discharge from further liability to them, it is hereby mutually agreed by and between the said creditors of said Johnson, whose names are hereunto subscribed, and the said Johnson, and between said creditors, respectively, as follows, to wit:

"The said creditors mutually agree between themselves, and agree between themselves and the said Johnson, and the said thereto agrees that, for the purpose of ascertaining and fixing the amount due from said Johnson to his said creditors, interest shall be computed and added to the original indebtedness of said Johnson at the rate of ten per cent. per annum, from the date of the contract upon which the said indebtedness has arisen, to the date of this instrument, disregarding entirely the terms of the contract in relation to interest; which amount so
165 found shall be taken and considered as the amount actually due from said Johnson to said creditors.

"2. It is hereby made the duty of each of said creditors to present their said claims to Clinton Briggs, George Armstrong, and Job W. Damon, who are hereby appointed a committee for that purpose, whose duty it shall be to ascertain the just amount due from said Johnson to each of his creditors, upon the basis above laid down, and the amount so by them found due, shall be deemed the true amount, and from their said finding there shall be no appeal.

"3. It shall be the duty of the said creditors to present their said claim to said committee within days from the date hereof, together with such evidences as they may have of their genuineness thereof; in default whereof the creditors so in default shall be debarred from any

benefit under this agreement, and the said Johnson shall be forever discharged from any and all liability to them, and the benefit which they would have derived shall revert and go to said Johnson.

"4. For the purpose of paying off the said indebtedness to be found due, the said Johnson agrees to give, and the said creditors agree
166 to receive in full payment of said indebtedness due acquittances or surrender of all right, title, and claim of, in, and to the following named tract of land, to wit: the S. W. ¼ of the N. W. ¼ of section twenty-two, and the S. E. ¼ of the N. E. ¼ of section twenty-one; also, the following piece of land, commencing at a point twelve chains and 53 links south of the N. E. corner of section twenty-one, in township fifteen N., range thirteen east, running thence due west 26 chains 75 links, thence south 7 chains 47 links, thence east 26 chains 75 links, thence 7 ch's 47 links to the place of beginning, being twenty acres, more or less. All of the above-described lands are in township fifteen north, of range thirteen east, in Nebraska Territory, which said lands *is to* be purchased and bid off at the public sale, whenever the said land shall be offered, and paid for by John H. Kellom, one of said creditors, with money to be provided by him and other of said creditors present, to be by him, the said John H. Kellom, held in trust for the benefit of all said creditors, himself included, to be divided and then conveyed to said creditors in parcels proportioned to the claims found due from said Johnson to them, in the manner above mentioned.

167 "5. The parties hereto are to assist the said Kellom in bidding off the said land, and neither the said Johnson nor any creditors, except said Kellom, shall be at liberty to bid thereon against said Kellom.

"6. The said creditors, as soon as may, after the said first two named tracts of land shall have been offered for sale and sold, shall *shall* surrender to said Johnson all evidence of his indebtedness, *and shall by them*, and shall execute and deliver to said Johnson all necessary satisfaction and discharge of said indebtedness.

"7. After said lands, or any part thereof, shall have been purchased by said Kellom in the manner above mentioned, then the said creditors and those interested in the said lands in the manner aforesaid, shall proceed to divide the same between the said creditors upon some just and equitable plan, to be adopted by the said creditors, and said Kellom shall then convey the same to said creditors upon such division in parcels proportionable to their respective claims.

"8. The last of the first-mentioned tracts of land is to be taken
168 and received by said creditors, subject to a lien thereon held by one F. Smith for about the sum of $140, which is to be paid by said creditors, but in case the said claim exceeds the sum of $140, then said excess is to be paid by said Johnson.

"10. Whereas fears are entertained by some *that* of the parties to this agreement that the decision of the Com. of the General Land Office in cancelling the preëmption made on said tract, by said Johnson, may be overruled and the said preëmption judged good, and thereby defeat the title acquired at this sale; *and that* in that event each of the parties hereto; shall be restored to the same proportion and rights, as near as may be, as if the contract had not been made." And is signed by Harrison Johnson, Gilbert C. Monell, C. H. Downs, John McCormick & Co., John H. Kellom, C. E. Stone, Reuben Gaylord, Newton Nuckolls, jr., John McConihe, C. B. Smith, jr., John McConihe, W'm Johnson, Cyrus Conant.

And your orators say that by reason of the loss of said agreement and their inability to produce the same or a true copy thereof on the

hearing of said cause, the terms, nature, and consideration of said
169 agreement, were not there on said hearing of said cause truly and fairly made known to this court, and that by reason thereof and of the decree thereof, so made and rendered as aforesaid, your orators have been greatly aggrieved and injured.

And your orators are advised and insist, under the circumstances aforesaid, that the said decree so made as aforesaid, in consequence of the discovery of such new material matter of evidence as aforesaid, should be reviewed, reversed, and set aside, and therefore your orators do humbly insist that the said bill of complaint ought to have been dismissed out of this honorable court. To the end, therefore, that the said James S. Easley and William W. Willingham, defendants, may answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they, and every of them, distinctly interrogated thereto, and that, for the reasons and under the circumstances aforesaid, the said decree and all the proceedings had thereon may be reviewed, reversed, and set aside, and that the said bill of complaint aforesaid may be dismissed out of this honorable court, and that the said defendants, Easley and Willingham, may be decreed to restore to your orators all their rights and interests,
170 respectively, in and to the premises in every respect, as if said decree had not been pronounced; and that in the meantime and until this cause receives the further judgment of this court, the said defendants, James S. Easley and William W. Willingham, their attorney or attorneys, solicitor or solictors, counsellors, agents, and assigns may be restrained by the injunction of this honorable court from prosecuting said decree and from carrying the same into execution and from asserting control over, and in any way intermeddling with the said premises, or any part, parcel, or undivided interest thereof; and that your orators may have such other and further relief and under the circumstances hereinbefore particularly mentioned as to your honor shall seem meet and the nature of the case may require—

May it please your honor to grant unto your orators not only the usual writ of injunction issuing out of and under the seal of this honorable court to be directed to the said defendants James S. Easle y and William W. Willingham, their attorneys, solicitors, counsellors, a g nts, and assigns to restore them as hereinbefore prayed, but also the usual writ of subpœna to be directed to the said defendants James S. Easley and William W. Willingham, thereby commanding them at a certain day and under certain form to be therein limited, to appear be-
171 fore your honor in this honorable court, and then and there fully, truly, and perfectly answer to make to all and singular the premises, and further to stand to and abide such further order, direction, and decree as therein to your honor shall seem meet.

And your orators shall ever pray, &c.

DANIEL GANTT,
Solicitor & of Counsel for Plaintiff.

DISTRICT OF NEBRASKA, *ss:*

On this 16th day of November, A. D. 1867, personally appeared before me, the clerk of the circuit court of the United States for said district of Nebraska, John H. Kellom, who, being by me first duly sworn, says he is one of the plaintiffs in the above bill of review, that he has heard the same read and knows the centents thereof, and that, of his own knowledge, he knows it to be true, and to the matters and things therein

stated, except as to those matters and things therein stated on advice and information, and as to them he believes it to be true.

E. B. CHANDLER, *Clerk.*

172 On which said paper appears the following endorsements in words and figures following, to wit:

55. U. S. circuit court. John H. Kellom et al. vs. Easley and Willingham. (Bill of review.) Filed Nov. 18th, 1867. E. B. Chandler, clerk.

173 And thereupon, afterwards, to wit, on the 29 day of November, A. D. 1867, the following paper was entered and appeared of record in said cause, in words and figures following, to wit:

In equity.

The joint answer of James S. Easley and William W. Willingham, defendants, to the bill of review of John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail, complainants.

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception to the many errors, uncertainties, and imperfection' in the said bill of review contained, or unto so much and such parts thereof as these defendants are advised is or are material for them to make answer unto, answering, say that they deny that, on the second day of November, one thousand eight hundred and sixty-six, they exhibited their bill of complaint in this honorable court, as in the said bill of review is in that behalf alleged, and say that, on the ninth day of July, one thousand eight hundred and sixty-three, they exhibited their certain bill of
174 complaint in the district court for the first judicial district of the late Territory of Nebraska, which last-mentioned bill was of the tenor and to the effect of the bill in the said bill of review referred to; that to the said bill so by these defendants exhibited, the said complainants, Chapman and Johnson, on the seventh day of August, in said year, and the said complainant Kellom, on the 10th day of August in said year, interposed demurrers to said bill, which demurrers were by said court overruled; that, accordingly, the said complainants Kellom and Chapman, on the thirteenth day of July, one thousand eight hundred and sixty-five, and the said complainant Johnson, on the 15th day of July, filed their several answers to the said bill of complaint; that, afterwards, the said bill was lost from the files of the said court, and, under and in pursuance of an order of the said court, the same was supplied by the filing therein, on the second day of November, one thousand eight hundred and sixty-six, of a copy thereof, which is the same bill as that referred to in said bill of review, and these defendants
175 say that they believe that the contents of said bill are truly stated in said bill of review; that, on the third day of November, in said year, said complainants Kellom and Chapman filed another answer to said bill, and these defendants say that they believe that the contents of said answer are truly stated in said bill of review, but they crave leave to refer to the record thereof, to correct any inaccuracies which may appear from an inspection and comparison thereof.

And these defendants, further answering, admit that the said cause and the record thereof, having been duly removed into this court, such further proceedings were thereupon had in the said cause as are in the said bill of review in that behalf alleged, save that as these defendants charge in the decree therein rendered, as the same appears upon the

record and journal and complete and final record in this honorable court, the premises subjected to the lien of these defendants, is fully and distinctly described.

And these defendants, further answering, admit that, at the hearing of said cause, the original agreement in the said bill mentioned was not produced, but they say that, having traced the same, by compe-
176 tent evidence, into the hands of the said complainants, and thereupon duly called upon them to produce the same, they refused so to do, whereupon the contents was by these defendants shown by paral evidence; and they now here charge that the said complainants, in order to prevent the contents thereof from duly appearing in the cause, have destroyed the same; and these defendants, on information and belief, deny that the pretended copy set out in said bill of review is a true copy, or that it has, since the said decree, come to the knowledge of said complainants, or that they made diligent or any search or inquiry after said agreement, or were unable to find the same, or that said alleged copy was in existence, or that said alleged copy was made at the time it is in said bill alleged to have been made. And these defendants now here charge the fact to be that the true terms, conditions, and stipulations of the said agreement were fully proved and established in said cause, and made to this honorable court upon the hearing thereof, and that, in and by the said decree, the said complainants were not in any degree or manner aggrieved.

177 And these defendants submit to this honorable court that all and every the matters and things in the said bill of review mentioned and complained of, are matters which have been once tried, debated, considered, and determined in and by this honorable court, and rightly and truly adjudged and decreed, and they ought not to be again drawn into question herein.

And they pray that they may have the same benefit of this defense as if they had demurred to the said bill of review and each and every part thereof separately.

And these said defendants deny all unlawful combination and confederacy in the said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed, or avoided, traversed or denied, is true, to the knowledge of these defendants.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

178 J. M. WOOLWORTH,
Solicitors and of Counsel for Def'ts.

DISTRICT OF NEBRASKA, *ss:*

On this 29th day of December, 1869, before me came J. M. Woolworth, the solicitor for defendants in above answer, and being by me duly sworn, said *said* answer was made of his own personal knowledge, except as to the matters stated on information and belief, and as to those matters he believed it to be true; that said defendants are absent from his district and have no personal knowledge of said matter.

E. B. CHANDLER, *Clerk.*

On which said paper appears the following endorsements in words and figures following, to wit:

55. U. S. circuit court, Neb. In eq. James S. Easley et al. ads. John H. Kellom, et al. Answer. J. M. Woolworth, sol. for def'ts, Omaha. Filed Nov. 29th, 1867. E. B. Chandler, clerk.

179 And thereupon, afterwards, to wit, on the 18 day of December, A. D. 1867, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

In equity. In U. S. circuit court for district of Nebraska.

The replication of John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail, complainants to the answer of James Easley and William W. Willingham, defendants.

These repliants, saving and reserving to themselves and each of them, now and at all times hereafter, all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of review to be true, certain, and sufficient in the law to be answered, and that the said *said* answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained
180 material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied is true, to the knowledge or belief of these repliants or either or any of them.

All which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and pray, as in and by their said bill of review they have already prayed.

DANIEL GANTT,
Sol. for Compl'ts.

On which said paper appears the following endorsements in words and figures following, to wit:

No. 55. U. S. circuit court, Neb. John H. Kellom et al. vs. Easley and Willingham. Replication. Filed Dec. 18, 1867. E. B. Chandler, clerk.

181 And thereupon, afterwards, to wit, on the 31st day of August, A. D. 1869, the following paper was entered and appears of record in said cause in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

JOHN H. KELLOM, HARRISON JOHNSON, JAMES G. Chapman, and George Vail,
vs.
JAMES S. EASLEY AND WILLIAM W. WILLINGham.

Depositions of witnesses taken in the above-entitled cause, on behalf of the complainants, on the 5th day of May, 1869, at the office of J. E. Kelley, in the city of Omaha, Neb., before me, the said J. E. Kelley, examiner in chancery, upon an order of said circuit court in the said cause made, for the purpose of taking the deposition of William F. Sapp. Present, Daniel Gantt, solicitor for the complainants, James M. Woolworth, solicitor for the defendants.

182 WILLIAM F. SAPP, witness produced, and being duly sworn and examined—

First question. What is your age, occupation, and place of residence?

Ans. first. Age 44 years; attorney at law; Council Bluffs, Iowa.

Second question. Where did you reside and in what business were you engaged immediately before you moved into the State of Iowa?

Ans. 2. I came to Omaha, Nebraska, in the spring of 1860, and was engaged in the practice of law until I went into the military service, which, I believe, was in December, 1862; but I will not be positive. It may have been later than that.

Ques. 3. State whether or not you had in your possession, at one time, the original agreement made between Harrison Johnson and certain of his creditors, in regard to his compromising of his debts with the said certain creditors, and in relation to the purchase by John H. Kellom from the Government of the United States, in 1860, of certain lands in the said agreement described. And if you answer yea, please
183 state when you had such agreement in your possession, and for what purpose.

Ans. My best recollection now is that I had such a contract in my possession for examination for a short time. I cannot recollect definitely when it was; but I think it was in 1861. The circumstances under which the contract came into my hands were these: Mr. Harrison Johnson filed a bill in the *the* district of Douglas County, against certain of his creditors, involving the land referred to in said contract. And these creditors employed me as their attorney, or as one of their attorneys, to defend the suit commenced, and in this way the contract was placed in my hands for examination. I procured the contract from Mr. Job W. Damon, who I believe was interested for and represented some of Mr. Johnson's creditors.

Question. State whether or not you made a true copy of said contract when the same was in your possession as stated.

Ans. My best recollection now is that there were two copies of
184 that contract made. One of them retained by me, the other by Mr. Damon.

Question. Look at this exhibit marked A, and state whether or not it is a true copy of the said contract, and by whom and in whose handwriting the same was made, and when.

Ans. This copy, marked Exhibit A, is in my handwriting, and was intended to be a correct copy of the original, and I think is. It was made by me, I think, at the time the original was in my possession, as before stated.

Question. State whether or not the original contract is now in your possession; and if not, whether or not you know where the same now is.

Ans. It is not in my possession now; and my recollection is that it was taken by Mr. Damon, to be delivered to Dr. Monell after these copies were made.

Cross-examination:

Question. I call your attention to a certificate appended to the said copy, signed J. W. Damon. State in whose handwriting the said certificate is.

185 Ans. The certificate is in my handwriting.

Question. In whose handwriting is the signature of J. W. Damon?

Ans. It is also in my handwriting.

Question. Calling your attention to these facts, and to the further fact that the said certificate is dated the preceding year, will you please state if it is not probable that the papers marked Exhibit A, is not a copy of some other copy of said agreement?

Ans. I feel quite confident, in my recollection, that the original agreement, as well as the copy that was taken by Damon, were both in my possession. I think the copy that was taken by Damon was taken by my instance or suggestion, and I have an indistinct recollection that both copies were compared by Mr. Damon and myself with the original; I have given the matter a good deal of thought for a year or so past, and this is my best recollection; it has been a good while since the matter occurred, and I cannot recollect everything about it with that distinctness which I would like to; I think Mr. Damon's copy
186 and mine were made about the same time; it may be possible that these copies were made shortly after the agreement was entered into; I would not be positive that the suit was commenced at the time these copies were made.

Question. If you made this copy from the original, can you explain how it happens that the certificate signed with Damon's name is in your handwriting?

Answer. I cannot explain why this was done; I have thought about it; but the object in doing so does not come back to my recollection.

Question. Who made the copy which Damon took?

Ans. I think Damon did; but I would not be positive.

Question. When were you first applied to by any of the complainants in this suit, or on their behalf, for information touching said agreement, or any other matters about which you have been interrogated?

187 Ans. It was not until after I had been living at Council Bluffs some time; I think not until within two years past.

Question. Was Exhibit A shown to you at the time you were first applied to for information?

(Complainants object to the question, on the grounds that it is not a proper cross-examination.)

Answer. I think Mr. Gantt and I talked about the question before Exhibit A was presented to me, and it may be Mr. Kellom and I that talked about it; I won't be positive.

Question. Do you remember what the object was of the bill filed by Johnson, touching these lands?

(Complainants object to the question, as it is new matter.)

Ans. I cannot recollect the object of the bill definitely, but think Johnson claimed that, under the contract, his indebtedness with all of his creditors were compromised, and that certain of his creditors
188 were seeking to appropriate the lands to their use, in fraud of his rights under the contract; he claiming that all of his creditors, or many more, at least, than was admitted by the defendants, were included in said contract, and asking that the shares of the land that would be going to these creditors not included in the division that was made, should be set apart for him. I remember the matter went off on demurrer, and for this reason the objects of the bill are not as strongly impressed upon my mind as they would have been if there had been a contest upon the merits.

(Complainants object to all of the above answer, on the further ground that the same is secondary evidence, and not the best evidence.)

Question. What was the ground of demurrer to the bill?

(Complainants make the same objection as to the next preceding question.)

Ans. I cannot now state with precision, but think the point taken was that the contract, as disclosed by the bill, was illegal.

Question. Was your attention called by any of the defendants
189 in that suit, while you were charged with the defence thereof, to

the fact that, under the contract, and by its terms, no part of the land reverted to said Johnson, and that his claim in that behalf was unsupported by the provisions of the said contract?

(Question objected to by the complainants on the ground that it is not a proper cross-examination, and that it is leading.)

Answer. The rights of Johnson and the defendants in that suit under the contract, must have been pretty fully talked over between me and such of them as had the defense in charge; but as to the particular subject talked about, I cannot now remember very distinctly, and if I could, I would not think it prudent for me to state it, as I was acting as their attorney at the time.

Question. Look at the paper marked Exhibit "F," attached to a deposition filed in number (56) in this court; compare the certificate at the foot thereof with the certificate *with the certificate* with Exhibit A, in this cause, and having done so, and refreshing your mind thereby, state if Exhibit "A" was not copied by you from Exhibit "F?"

190 Ans. I find the certificates on comparison to agree. I cannot state that the certificate at the foot of Exhibit A was taken from the certificate at the foot of Exhibit F, though it may have been; neither can I say that Exhibit A is a copy of Exhibit F; my best recollection upon that subject is, as I have before stated, though my recollection is not as distinct about the entire transaction as I would wish it to be.

Reëxamination:

Question. Your attention was called in the cross-examination as to whether or not Exhibit A was presented to you by any person, and inquiries made of you in respect to it and this suit. Will you please state where you had left your papers, including this one, before your removal to Iowa, and the circumstances under which you so left them at any place and again recovered this exhibit into your possession.

Ans. After I went into the military service, as before stated, Mr. Gantt and myself formed a business connection in this city, and I

191 left most of my papers including Exhibit "A" in the office he then occupied. I think they were in my desks and drawers some time after I moved to Council Bluffs, I should think about three years. Mr. Gantt sent me this Exhibit "A" as having been found among some of my old papers. It was sent by mail, I think; I remember of having stated to him before of having had such a copy.

W. F. SAPP.

UNITED STATES OF AMERICA,
District of Nebraska. ss:

I, J. E. Kelley, examiner in chancery for the circuit of the United States for the district of Nebraska, do hereby certify, by virtue of an order of said court made for the purpose of taking the deposition of William F. Sapp, in the suit pending in the said court between John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail, complainants, and James S. Easley and William W. Willingham, defendants—

On the fifth day of May, A. D. 1859, at my office in the city of Omaha, the said William F. Sapp appeared before me, a witness

192 on behalf of the complainants, whose deposition is hereto annexed, and who was first by duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that his deposition was then and there taken down in writing by me; that after said deposition was completed, the same was read over to him by me,

and was by him then and there signed in my presence, and in the presence of the counsel of the parties at the time of taking the same; that Daniel Gantt, counsel for the complainant, and James M. Woolworth, counsel for the defendant were present at the taking of the said deposition.

Witness my hand this 5th day of May, A. D. 1869.

J. E. KELLEY,
Examiner in Chancery.

On which said paper appear the following endorsements in words and figures following, to wit:

No. 55. John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail, vs. James S. Easley and William W. Willingham. In U. S. circuit court for the district of Nebraska. Opened by order of court, and filed Aug 31, 1869. Watson B. Smith, clerk.

193 And thereupon, afterwards, to wit, on the 31st day of August, A. D. 1869, the following paper was entered, and appeared of record in said cause, in words and figures following, to wit:

EXHIBIT "A."

Whereas Harrison Johnson, of the county of Douglas, N. T., is indebted to divers persons in various large sums of money, and is unable to pay the full amount thereof, now, therefore, for the purpose of settling and compounding with certain of his said creditors, and of paying them so far as he is able to do, and for the purpose of obtaining from the said creditors a full release and discharge from further liability to them, it is hereby mutually agreed by and between the said creditors of said Johnson, whose names are hereunto subscribed, and the said Johnson, and between the said creditors respectively, as follows, to wit:

1st. The said creditors mutually agree, between themselves and the said Johnson, and the said Johnson thereto agrees that, for the purpose of ascertaining and fixing the amount due from said Johnson to his said creditors, interest shall be computed and added to the original indebtedness of said Johnson at the rate of ten per cent. per annum from the date of the contract upon which the said indebtedness
194 has arisen, to the date of this instrument, disregarding entirely the terms of the contract in relation to interest, which amount so found shall be taken and considered as the amount actually due from said Johnson to said creditors.

2. It is hereby made the duty of each of the said creditors to present their said claims to Clinton Briggs, George Armstrong, and J. W. Damon, who are hereby appointed a committee for that purpose, whose duty it is to ascertain the just amount due from said Johnson to each of his said creditors, upon the basis above laid down, and the amount so by them found due shall be deemed the true amount, and from the said finding there shall be no appeal.

3. It shall be the duty of said creditors to present their said claims to said committee within days from the date hereof, together with such evidence as they may have of the genuineness thereof; in default whereof the creditors so in default shall be debarred from any benefit under this agreement, and the said Johnson shall be forever discharged from any and all liability to them, and the benefits which they would have derived shall revert and go to said Johnson.

195 4. For the purpose of paying off said indebtedness so to be found due, the said Johnson agrees to give, and the said creditors agree to receive, in full payment of said indebtedness, due acquittances,

or surrender of all rights, title, and claim of, in, and to the following-named tract of land, to wit, the S. W. ¼ of the N. W. ¼ of section 22, and the S. E. ¼ of the N. E. ¼ of section 21. Also, the following piece of land: Commencing at a point 12 chains and 53 links south of the N. E. cor. of section 21, in township 15 N., of R. 13 E., running thence due west 26 chains 75 links, thence south 7 chains 47 links, thence east 26 chains & 75 links, thence south 7 chains & 47 links to the place of beginning, being 20 acres, more or less. All of the above-described lands are in township 15 N., of R. 13 E., in Nebraska Territory, which said land is to be purchased and bid off at the public sale, whenever the said land shall be offered, and paid for by John H. Kellom, one of said creditors, with money to be provided by him and other of said creditors present, to be by him, the said John H. Kellom, held in trust
196 for the benefit of all of said creditors, himself included, to be divided and then conveyed to said creditors in parcels proportioned to the amount of the claims found due from said Johnson to them in the manner above mentioned.

5. The parties hereto are to assist the said Kellom in bidding off the said land, and neither the said Johnson nor any creditors except said Kellom shall be at the liberty to bid thereon, so as against said Kellom.

6. The said creditors, as soon as may be, after the first two named tracts of land shall have been offered for sale and sold, shall surrender to said Johnson all evidence of his said indebtedness, and held by them, and execute and deliver to said Johnson all necessary satisfactions and discharges of said indebtedness.

7. After said land or any part thereof shall have been purchased by said Kellom in the manner above mentioned, then the said creditors and those interested in the said lands in the manner aforesaid, shall proceed to divide the same between the said creditors upon some just and equitable plan to be adopted by the said creditors, and said Kellom
197 shall then convey the same to said creditors upon such division, in parcels proportionate to their respective claims.

8. The last of the first-mentioned tracts of land is to be taken and received by said creditors, subject to a lien thereon held by one F. Smith, for about the sum of $140, which is to be paid by said creditors; but in case the said claim exceeds the sum of $140 then said excess is to be paid by said Johnson.

10. Whereas fears are entertained by some *that* of the parties to this agreement that the decision of the Com. of the Gen. Land Office, in cancelling the preëmption made on said tract by said Johnson may be overruled, and the said preëmption judged good, and thereby defeat the title acquired at this sale; and in that event each of the parties hereto shall be restored to the same proportion and rights as near as may be, as if this contract had not been made.

HARRISON JOHNSON.
GILBERT C. MONELL.
JOHN H. KELLOM.
C. H. DOUNS.
JOHN McCORMICK & CO.
C. E. STONE.
HOUSTON NUCKOLLS,
Per JOHN McCONIHE.
198 C. B. SMITH,
Per JOHN McCONIHE.
REUBEN GAYLORD.
W'M JOHNSON,

Ex'ct Conant.

I hereby certify that I have examined and compared it with the original, and declare the same to be an exact copy thereof.
October 27th, 1860.

J. W. DAMON.

On which said paper appears the following endorsements in words and figures following, to wit:

No. 55. Filed August 31st, 1869. Watson B. Smith, clerk.

199 And thereupon, afterwards, to wit, on the 17th day of November, A. D. 1868, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

JAMES S. EASLEY AND WILLIAM W. WILLingham
vs.
HARRISON JOHNSON, JOHN H. KELLOM, GEORGE Vail, James G. Chapman, et al.

Depositions of witnesses taken in the above-entitled action, in behalf of the defendants, on the thirteenth (13) day of July, 1868, at the office of the undersigned, master in chancery, upon notice which is hereto annexed. Attorneys present, Dan. Gantt, esq., solicitor for defendants.

O. F. DAVIS, witnesses produced and examined on the part of complainants, deposes and says as follows:

Question 1. What is your name, age, and place of residence, and occupation?

200 Ans. 1. My name is Oscar F. Davis; age, forty-one years; resides at Omaha, Douglas County, Nebraska; occupation, real-estate agent.

Question 2. How long have you resided in Omaha City?

Ans. 2. Since the spring of 1856, (1856.)

Question. Are you acquainted with George Vail, one of the parties to this suit? and if so, state where he now resides for the last four or five years.

Ans. I am; he resides in the State of New Jersey, I think in Morristown; he has resided there for the last past five years.

Question. State whether or not, since the year 1856, the said George Vail has resided in Nebraska at any time.

Ans. Not to my knowledge; he was here a short time during the years eighteen hundred and fifty-seven, or the year eighteen hundred and fifty-eight, (1857) or (1858,) but not long enough, I thimk, to gain a residence here.

OSCAR F. DAVIS.

201 JOHN H. KELLOM, witness, being produced, sworn, and examined on the part of complainants, deposes and says:

Ques. 1. Are you one of the parties to this suit?

Ans. 1. I am.

Ques. 2. State whether or not you now have, or at any time heretofore have had in your possession, the original agreement between Harrison Johnson and certain of his creditors, in relation to said Johnson

compounding with said creditors, and of the purchase by you from the United States of the southeast quarter of the northeast quarter of section twenty-one, in township fifteen north, range thirteen east, in Nebraska, being lands in controversy in this suit.

Ans. I have not now, and do not recollect of ever having the said original agreement in my possession.

Ques. 3. State whether or not you have any knowledge of where said agreement is, or what has become of it; and if so, state fully your knowledge in that regard.

Ans. I have no knowledge of where the original agreement is or what has become of it.

Ques. 4. State whether or not you, at any time, made search
202 for said agreement; and if so, state the particulars of the same.

Ans. I have more than once made search for papers connected with this transaction, and last April searched thoroughly through all my papers for this original agreement, but found it not, and discovered no clue to its whereabouts.

Ques. 5. State whether or not you have discovered a copy of said agreement; and if so, where did you first know of such copy, and where did you see it?

Ans. I have discovered a copy which, to the best of my recollection, is a true copy of the original agreement; I saw it for the first time in the last week in August, 1867, in the hand of Daniel Gantt, esquire, in his office, and was informed of the existence of such a copy some three or four days before I saw it; and this was the first knowledge I had of it.

JOHN H. KELLOM.

JAMES G. CHAPMAN, a witness produced, sworn, and examined on the part of the complainants, deposes and says as follows:

203 Ques. 1. State whether or not you now have, or at any time heretofore have had, in your possession the original agreement between Harrison Johnson and certain of his creditors, in relation to said Johnson compounding with said creditors, and of the purchase by John H. Kellom from the United States of land in controversy in this suit.

Ans. I have not got that original agreement, nor do I remember of ever having had it.

Ques. 2. State whether or not you have at any time discovered or know anything of a copy of said original agreement; and if so, state when you discovered such copy.

Ans. I believe there was such a copy at one time in the office of Sapp and Chapman, but I cannot state the time precisely, but think it was in the year 1860. That copy is not in my possession. I have made diligent search for the same. I cannot even say that I saw that copy myself, if there was any. Mr. Sapp must have it.

JAMES G. CHAPMAN.

204 DANIEL GANTT, a witness produced, sworn, and examined for the complainants, deposes and says as follows:

Ques. 1. Are you one of the solicitors for the complainants in this suit?

Ans. I am.

Ques. 2. State whether or not you did at any time discover a copy of an agreement between Harrison Johnson and certain of his creditors, in relation to said Johnson compounding with said creditors, and of the

purchase by John H. Kellom from the United States, in August, 1860, of the southeast quarter of the northeast quarter of section twenty-one, township fifteen north, of range thirteen east, in Nebraska, being lands in controversy in this suit; and if so, state how, when, where, and in whose handwriting the same is.

Ans. When William F. Sapp went into the military service of the United States I think in the fall of 1862, he left his books and library and papers in my office, in Omaha City. They remained in my office until he settled in Council Bluffs, Iowa, when he took, as I supposed,
all his books and papers away from my office sometime after the
205 May term, 1867, of the United States circuit court; and in the
month of August, I believe, in looking over some old papers and pamphlets in my book-case, I found some books and pamphlets and one roll of papers belonging to William F. Sapp, which had been left when he moved his books. This was the first that I knew that said books, pamphlets, and papers were in my office. In examining this package of papers I found what purported to be a copy of the agreement between Harrison Johnson and certain of his creditors referred to in this interrogatory. This was the first time I ever knew there was a copy of such agreement. Soon after discovering this copy I showed the same to John H. Kellom, and it is the same referred to by him in his deposition just taken. The reason why this copy cannot be attached as an exhibit to these depositions is that the same must be sent to William F. Sapp, who alone is the only person of whom I know that can prove it to be a true copy of the original agreement, as the said copy is in his own handwriting.

DANIEL GANTT.

206 UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, J. E. Kelley, examiner in chancery for the United States circuit court and district of Nebraska, do hereby certify that I appointed and fixed Saturday, the eleventh day of July, 1868, for the taking of testimony in the foregoing cause before me, at my office in Omaha City, Nebraska; that at the time and place so appointed and fixed by me, and pursuant to the notice thereof served on the counsel of defendants, and hereto annexed, the solicitors of the complainants appeared before me, and then and there O. F. Davis, John H. Kellom, James G. Chapman, and Daniel Gantt, witnesses on behalf of the complainants, whose depositions are hereto annexed, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that the several depositions of said witnesses were then and there taken down in writing by me; that the depositions of each one of said witnesses, after the same was completed, was by me read over to him, and was by him then and there signed in my presence and in the presence of the counsel of the parties present at the time of taking the same.

Witness my hand this 13th day of July, A. D. 1868.

J. E. KELLEY,
Examiner in Chancery.

On which said paper appears the following endorsements, in words and figures following, to wit:

Opened by order of court, and filed Nov. 17, 1868. Watson B. Smith, clerk.

207 And thereupon, afterwards, to wit, on the 8th day of February,

A. D. 1870, the following paper was entered and appears of record in said cause in words and figures following to-wit:

Fee bill.

Circuit court of the United States, district Nebraska.

JOHN H. KELLOM ET AL.
vs.
JA'S S. EASLEY ET AL.

L. W. Ross, com'r	$15 00
C. E. Stone, 1 day	$2 50
Job W. Damon, " "	$2 50
Postage	30
	$20 30

208 *Dedimus potestatem.*

Circuit court of the United States, district of Nebraska.

To L. W. Ross, Council Bluffs, Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine C. E. Stone and J. W. Damon, of Council Bluffs, Iowa, on their corporal oaths, as witnesses in a cause depending in the circuit court of the United States for the district of Nebraska, wherein John H. Kellom et al., are plaintiffs, and James S. Easley et al., are defendants, upon the interrogatories annexed to this commission.

And therefore you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said C. E. Stone and J. W. Damon to come before you and then and there examine them on oath upon the said interrogatories; and that you reduce such examination to writing and return the same together
209 with the accompanying notice and interrogatories and this commission, under your seal, sealed up, and indorsed with the name of the parties litigant and the word " deposition " on the cover thereof into the said circuit court at Omaha, Nebraska, to the clerk thereof, with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourteenth day of October, A. D. 1869, and in the 94 year of the independence of the United States of America.

Attest:
[L. S.] WATSON B. SMITH, *Clerk.*

210 Interrogatories to be propounded to Calvin E. Stone & Job W. Damon, witnesses to be produced, sworn and examined, under and by virtue of a commission to be issued out of the circuit court of the United States for the district of Nebraska, in a certain cause depending therein, between John H. Kellom, James G. Chapman, George Vail, and Harrison Johnson, complainants, and John S. Easley and William W. Willingham, defendants.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants in the title to these interrogatories named, any or either, and which of them; if so, how long have you known them respectively, or such of them as you have known?

Third interrogatory. State whether or not you ever placed the contract between Harrison Johnson and his creditors or some of them in the hands of W. F. Sapp, or a copy thereof; if so, give in detail the circumstances thereof.

211 Fourth interrogatory. State whether or not you ever compared any copy of said contract with the original; state fully all that was done in that behalf.

Fifth interrogatory. When it was found that all of Johnson's creditors would not enter into the agreement, what, if any, change was made in its terms *was made*; declare fully all the circumstances thereof.

Sixth interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

(Endorsed as follows:) U. S. cir. court. No. 55. John H. Kellom et al. vs. James S. Easley et al. Interrogatories. J. M. Woolworth, def'ts sol. Filed Sept. 30, 1869. Watson B. Smith, clerk.

212 In circuit court of the United States for district of Nebraska.

JOHN H. KELLOM ET AL.
vs.
EASLEY AND WILLINGHAM.

Depositions of C. E. Stone and Job W. Damon, witnesses produced, sworn, and examined on behalf of respondents, in a certain cause depending in the circuit court of the United States for the district of Nebraska, wherein the above-named John H. Kellom et al. are complainants and Easley & Willingham are respondents, under and in virtue of the annexed commission, this 29th day of Jan., A. D. 1870.

C. E. STONE, being duly sworn, as hereinafter certified, deposes and says:

Interrogatory 1. What is your name, age, occupation, and place of residence?

To said 1st interrogatory he, answering, says: My name is C. E. Stone; age, 55 years; occupation, attorney; and residence, Council Bluffs, Iowa.

Interrogatory 2. Do you know the parties, complainants and
213 defendants, in the title to these interrogatories named, any or either, and which of them; if so, how long have you known them, respectively, or such of them as you do know?

To said 2nd interrogatory he, answering, says: I am acquainted with some of the parties aforesaid. I have known Willingham and Easley about 12 years; Harrison Johnson about 15 years; Gaylord, Redick, Briggs, McCormick, & Downs about 10 or 12 years; Saunders at least 30 years. Don t know the other complainants.

Interrogatory 3. State whether or not you ever placed the contract between Harrison Johnson and his creditors, or some of them, in the

hands of W. F. Sapp, or a copy thereof? If so, give in detail the circumstances thereof.

To said 3rd interrogatory he, answering, says: I never did. I have not seen the contract since it was signed in Seeley's office.

Interrogatory 4. State whether or not you have compared any copy of said contract with the original. State fully all that was done in that behalf.

To said 4th interrogatory he, answering, says: I have not. I have not seen or read the contract since it was signed on the morning
214 of the sale, and just before and in contemplation of the sale.

Interrogatory 5. When it was found that all of Johnson's creditors would not enter into the agreement, what, if any, change was made in its terms, *was made?* Declare fully the circumstances thereof.

To said 5th interrogatory he, answering, says: After Johnson's preemption was cancelled, or set aside, the land was advertised for sale, and the sale brought all, or nearly all, of the creditors of Johnson together, either in person or by attorney. I now remember that Sam'l Curtiss, of Council Bluffs, was there representing the Beers claim, and J. P. Casaday, of Council Bluffs, was there representing the claim of Easley and Willingham. I was there representing my own claim, then reduced to judgment and sale on execution. I went prepared and intending to bid in the land at the land sale, but was deterred from so doing by threats. Just as the sale was about to take place an understanding was reached between the register and Johnson, and some of the cred-
215 itors, for the adjournment of the sale until the next morning. Johnson then asked a conference with his creditors at the office of his att'y, Seeley. At that meeting Johnson stated, in substance, that he was willing to let his creditors take one 80 of the land if they could give him receipts in full, and permit him to take the other 80 to his own use. And after talking it over those present consented that Seeley should reduce the matter to writing, and that the creditors would meet Johnson early next morning at Seeley's office, and hear the writing read over and sign it. When the parties came together again, Casady refused to sign the agreement for Easley and Willingham, and Clinton declined to approve and sign it for the Beers estate. I distinctly remember these as refusing to come into the arrangement unless their rights as mortgagees should be preferred. There may have been others, but I do not now remember. When Johnson found that these creditors would not come in, he demanded that a paragraph should be added to the contract which would secure to him the portions which would have fallen to the Beers estate and to Easley and Willingham had they come in,
216 as well as the portions falling to creditors subscribing to the contract, and failing to establish their respective claims by proofs, and he based his claims upon the grounds that he must have those portions of the creditors' 80 of land, so as to enable him to effect settlements and payments of these mortgage claims without absorbing all of the 80 which would fall to his use by this division. He stated then and there that he was unwilling to sign the contract without such addition. There was a good deal of talk and wrangle about these mortgage claims, Johnson insisting that he must be protected against them. I have a clear recollection of Johnson's claim on the one hand, and that the creditors then present, and ready to enter into the agreement, finally conceded that his claim was just. After Johnson had gained the protection demanded by him, I objected to the contract, and had another paragraph added for my own protection. I only consented to the interview because of the sale made, if I insisted on bidding at the sale. I suspected that

there was some collusion in the matter of setting aside the pre-
217 emption of Johnson, and that it might again be reinstated, and, for such event, I demanded a provision which would operate to render the contract void, and restore the parties to their original rights, and such a paragraph was then added to the writing, and it was signed, and the sale took place afterwards on the same day.

Interrogatory 6. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination, on the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

To said 6th interrogatory he, answering, says: I do not know that I can add anything, but here refer to the foregoing as fully disclosing my knowledge of the facts.

C. E. STONE.

And afterwards, on the same day, viz, on the 29th day of January, A. D. 1870, the said JOB W. DAMON, being duly sworn as hereinafter certified, deposes and says:

218 Interrogatory 1. What is your name, age, occupation, and place of residence?

To said 1st interrogatory he, answering, says: My name is Job W. Damon; age about 43 years; occupation farmer and gardener, and residence in or near Council Bluffs, Iowa.

Interrogatory 2 Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either of them; if so, how long have you known them, respectively, or such of them as you do know.

To said 2nd interrogatory he, answering, says: I have no acquaintance with Easley and Willingham, and of complainants have known Harrison Johnson, Gaylord, Redick, Briggs, McCormick, and Downs about 10 or 12 years. May know other of the complainants, but don't now remember.

Interrogatory 3. State whether or not you ever placed the contract between Harrison Johnson and his creditors, or some of them, in the hands of W. F. Sapp, or a copy thereof. If so, give in detail the circumstances thereof.

219 To said 3rd interrogatory he, answering, says: I did not. I have never, at any time, given him said contract, nor a copy thereof. The contract passed out of my possession at the time and place, and in the manner as stated in my deposition heretofore taken, and used on the hearing in the case between the parties in these interrogatories, named, and I have neither seen it nor had it in my possession nor under my control since that time. My recollections of these matters is the more distinct for the reason that some time after I had left the papers, including the contract, on the counter in a store in Omaha, with Dr. Monell and others, as stated in my said former deposition, Harrison Johnson, on several occasions, asked me for the contract, and as I often told him that it was neither in my possession nor under my control. He finally came to me and stated that he had traced it into my possession, and that I must have it. I then told him that I left it with the other papers in the store, Monell and two or three others remaining there, and also told him what Monell had stated to me about no one knowing what disposition was made of it,
220 and from that time Johnson ceased to talk to me about the contract.

Interrogatory 4. State whether or not you ever compared any copy of said contract with the original. State fully all that was done in that behalf.

To said 4th interrogatory he, answering, says: My relation to the contract and the business was that of committee-man, with Briggs and Armstrong, to calculate the sums due the creditors of Johnson. I got the contract from either Att'y Armstrong or Mr. Briggs, some time after the sale of the land. We (the committee) used the original contract in making the estimates, and, after these were done and the division arrived at, I left the contract in the store, as already stated, and after that time I neither had opportunity nor occasion to compare any copy with the original, and I have now no recollection of making such comparison after that time. I may have taken a copy of the agreement for Stone, as I received it from Armstrong or Briggs, as above stated; but if I did, it was before I left it in the store, as already stated, and I am quite certain that I did not certify to the "Stone" copy, and I
221 am positive that I never have compared any copy and the original with Mr. Sapp.

Interrogatory 5. When it was found that all of Johnson's creditors would not enter into the arrangement, what, if any, terms *was* made, and its terms *was made*? Declare fully all the circumstances thereof.

To said 5th interrogatory he, answering, says: I was not present when the contract was signed, and have no personal knowledge of the matters inquired of.

Interrogatory 6. Do you know, or can you set forth any other matters or things which may be an advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To said 6th interrogatory he, answering, says: I do not. I refer to my former answers as showing my knowledge of the facts.

JOB W. DAMON.

STATE OF IOWA, *Pottawattamie County, ss:*

222 I, L. W. Ross, the commissioner named in the annexed commission, hereby certify that, on the 29 day of January, 1870, at my office in Council Bluffs, Iowa, C. E. Stone, one of the witnesses named in the annexed commission, appeared before me, and was by me first sworn to testify the truth, the whole truth, and nothing but the truth in the case named in the commission, and that I afterwards, on the same day, examined him upon the interrogatories annexed to said commission, and reduced his answers thereto to writing, as set forth in the foregoing pages, and that I then read the whole over to the witness, and the same was by him approved and signed in my presence, and sworn to before me. And that afterwards, on the same day, and at the same time and place, Job W. Damon, the other of the witnesses named in said commission, appeared before me, and was by me first sworn to testify the truth, the whole truth, and nothing but the truth in the case named in said commission, and that I afterwards, on the same day, examined him upon the interrogatories annexed to said commission, and reduced his answers thereto to writing, as set forth in the foregoing pages, and that I then read the whole over to the witness, and the same was by him approved and subscribed in my presence,
223 and sworn to before me.

In witness whereof I hereunto set my hand this 29th day of Jan'y, 1870.

L. W. ROSS, *Commissioner.*

On which said paper appears the following endorsements, in words and figures following, to wit:

J. H. Kellom et al. vs. J. S. Easley et al. Depositions of C. E. Stone and J. W. Damon. Opened by order of court, and filed Feb'y 8, 1870. Watson B. Smith, clerk.

224 And thereupon, afterwards, to wit, on the 25th day of July, A. D. 1869, the following paper was entered and appears of record in said cause, in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

JOHN H. KELLOM ET AL., PLAINTIFFS,
vs.
JAMES S. EASLEY ET AL., DEFENDANTS.

Depositions of C. E. Stone, Job. W. Damon, and J. P. Casadey, taken on the 24, 26, and 27 of Oct., 1868.

E. W. ROSS, *Com'sr.*

Fees.—L. W. Ross,	as com'sr	.....	$15 00
" C. E. Stone,	" witness	.....	$2 50
" J. W. Damon,	" "	.....	$2 50
" J. P. Casadey,	" "	.....	$2 50
			$22 50

225 Depositions of witnesses produced, sworn, and examined by me, L. W. Ross, the commissioner named in the annexed commission, and in virtue of said commission issued out of the circuit court of the United States for the district of Nebraska, in a certain cause depending therein between John H. Kellom et al., as plaintiffs, and James S. Easley et al., as defendants, on behalf of said defendants, taken on the 24th, 26th, and 27th of Oct., 1868.

On the 24th day of Oct., 1868, C. E. Stone, one of the witnesses named in said commission, being by me first duly sworn, as hereinafter certified, deposes and says:

To first interrogatory, as follows: "What is your name, age, occupation, and place of residence?" he, answering, says:

C. E. Stone; 52 years; farmer and gard'ner, att'y at law; Council Bluffs, Iowa.

To the second interrogatory, as follows: "Do you know the parties, complainants and defendants, any or either, and which of them; if so, how long have you known them, or such of them as you do know?" he, answering, says:

226 I know Kellom, and may know other of the complainants, and have some acquaintance with defendants. I have known these parties for twelve years and upwards.

To the third interrogatory, as follows: "Are you acquainted with the history of the title to the premises in question in this cause? If so, give a detailed statement thereof, and particularly of the claims, and the efforts to establish the claims, of Harrison Johnson thereto under the preëmption laws," he, answering, says:

I am acquainted therewith; Johnson settled thereon and claimed the

same as a preëmption early in the history of Nebraska, probably as early as 1855. He built the dwelling in which he and his family have since resided, and made other valuable and substantial improvements at the time. In 1857, in the spring, I think, he preëmpted the premises at the U. S. land office, at Omaha, Nebraska, under the act of Sept. 4, 1841. His entry by preëmption was afterwards contested before the Com. of the Gen'l L. O., and was vacated. Pending the proceeding to vacate before the Commissioner, I recovered a judgment for about $2,500,
in the courts of Nebraska, against Harrison Johnson, on which I had
227 execution and the land sold, and I myself purchased the land at the sale. Whilst these judicial proceedings were going forward I learned of a scheme of Johnson's to let his entry be vacated and get title by sale, so as to cut me and some more mortgagees, Beers, among others, out of our claims and liens. I got Gen. S. R. Curtiss to appear at the General Land Office to protect my rights, notwithstanding which the Commissioner's decision was affirmed.

To the fourth interrogatory, as follows: "Are you acquainted with the facts, circumstances, and negotiations between said Johnson and his creditors, or any of them, which led to the making of an agreement on the 18th of August, 1860, touching said lands? If so, detail the same fully and at large, and particularly declare your interest therein, and connection therewith," he, answering, says:

I am; the land was ordered to be sold on or about that day by the officers of the land office. I went to Omaha to attend the sale, but was
informed by Johnson's attorneys, Jonas Seeley and Richardson,
228 that I would not be allowed to bid on the land. I was given to understand that violence would be done me if I did, but do not now remember the language used. I went to the sale for the purpose of bidding, however. I found Johnson and some of his friends there, and *and* some of his creditors. While we were waiting for the sale to open a compromise was proposed and the sale held open to enable the parties to effect it. A meeting was accordingly held at Seeley's office, in Omaha, at which, by invitation, I was present. Johnson proposed to take one eighty, and let his creditors take the other, he to bid in his eighty, and the creditors to bid in their eighty, in the name of Kellom. It was agreed that he should not bid against Kellom, nor Kellom against him. I required a stipulation that my rights upon my judgment should not be affected if the sale proposed should be held invalid by the Land Department, or if the preëmption of Johnson should at any time afterwards be reinstated. The existence of the mortgages favor of J. B. Beers, and Easley and Willingham, was talked over, and the question of their validity, and of the possibility of enforcing them against the
land, if title should be gained in the manner proposed, was fully
229 discussed. I maintained that the proposed action would be in fraud of the Government and of the rights of the mortgagees under the preëmption. The prevailing opinion, however, was, that the mortgages could be defeated, and the lands held by the parties free of them. It was at this time expected that those having mortgages and judgments, and all others, would enter into the arrangement. Jonas Seeley, att'y for Johnson, drew up the writing, setting forth what had been talked over and determined on.

To the fifth interrogatory, as follows. State your means of knowledge of the contents of the said agreement, and state the contents fully and at large. He, answering, says:

I was present when the same were agreed to. I read the writing prepared by Seeley very carefully, with a view to protecting myself. I so

read it before it was signed, and may have read it afterwards. According to my best recollection it provided that Johnson's debts should be presented to Geo. Armstrong, Job W. Damon, and Clinton
230 Briggs, and they to compute the amounts due upon each debt, taking the original consideration, and adding interest thereon at the rate of ten per cent. per annum. Kellom was to bid off one eighty, which was to be divided pro rata among these debts, and Kellom was to deed to each creditor the land assigned to him. Each creditor so taking a part of the land was to surrender to Johnson his debt, and all evidences of it, but if the sale was at any time thereafter vacated, I was to have my lien and claim unimpaired. If any one of Johnson's creditors did not come in and sign the agreement in a time therein limited, and show his debt, and release it, his portion of the land was to go to Johnson to enable him to effect a settlement privately. There may have been some other provisions, but the above is the substance of the agreement.

To the sixth interrogatory, as follows: Do you know, if so, state here, where said agreement is; and if you do not know, state when last you saw the same; and so far as you are able, what has become of the same, he, answering, says:

231 I do not know where it is. After the execution of the agreement, I made Job. W. Damon, one of the commissioners to settle the amount due on the debts, my agent. From that time I acted through him. I afterwards saw in Damon's possession what purported to be a copy of the agreement, but have no clear recollection of seeing the original since it was placed in the hands of Damon and the other commissioners. Damon furnished me what purported to be a copy, which is now lost or destroyed; at least I cannot find it.

To the seventh interrogatory, as follows: What was done, if anything, to carry the said agreement into execution? he, answering, says:

Several creditors signed it and presented their claims to the commission who settled the amounts. The land was divided among certain creditors of Johnson who came in, excluding all others, and the land was deeded accordingly. At the sale, Kellom bid off the eighty-acre tract which the creditors were to have, at the minimum price,
232 and Harrison Johnson bid off the other eighty, at the minimum price, no one bidding against him. Many of the creditors attended the sale for the purpose of seeing that the agreement was carried out, and to prevent a contest among bidders.

To the eighth interrogatory, as follows: Were you present at the sale of the premises referred to in said agreement; if yea, state fully and particularly all that transpired thereat, he, answering, says:

I was present. Nothing special occurred. The officers offered one eighty for sale. Harrison Johnson bid it off in the name of his mother, Mrs. Sarah A. Johnson. It was struck off to him at the minimum price, and he paid for it accordingly. The other eighty was offered, and was bid off by John H. Kellom, in his own name, and he paid for it accordingly.

To the ninth interrogatory, as follows: State whether or not the said Johnson made any, and if so, what demands upon the persons carrying said agreement into effect. Detail the circumstances thereof; how the said demands were met; and what steps, if any, were taken to
233 enforce and to resist the same, he, answering, says:

Johnson claimed that the agreement should be carried out fully, and that he should have the portions going to creditors not coming in under the agreement. This claim was resisted. He afterwards instituted

a suit in the courts of Nebraska, which was subsequently discontinued. With the matter of this record, I am not sufficiently advised to testify in relation to it.

To the tenth interrogatory, as follows: State whether or not all the creditors of said Johnson who signed said agreement came in under the same; if any did not, who did not? State fully the facts and circumstances relative thereto; he, answering, says:

Cha's B. Smith signed the agreement, but did not come in, and in the division nothing was set apart to him. I do not remember any others.

To the eleventh interrogatory, as follows: State whether or not any copy of said agreement was, by any party or parties, taken thereof;
234 if so, when and by whom, and for what purpose; he, answering, says:

I cannot answer of my own knowledge. I have seen what purported to be a copy in hands of Damon, and have heard of the destruction or concealment of the original; but have no personal knowledge. Damon gave me the copy I saw in his possession, which I kept for some years; but same is now lost or destroyed.

To the last interrogatory, as follows: Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer; he, answering, says:

I do not; except that the conveyances by Kellom were not in every case made to the creditor personally, but to a person designated by the creditor.

C. E. STONE.

235 The further taking of deposition continued to the 26th of Oct., 1868.

L. W. ROSS, *Com'sr.*

OCT. 26, 1868.—At the s—— time and place said JOB W. DAMON, of lawful age, and by me first duly sworn and by me examined, and to said first interrogatory, as follows: What is your name, age, occupation, and place of residence? he, answering, says:

Job W. Damon; 41 years; farmer and gardener; Council Bluffs, Iowa.

To said second interrogatory, as follows: Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either, and which of them, and how long have you known them, respectively, or such of them as you do know? he, answering, says:

I have known Kellom about 10 years, and James S. Easley about same length of time; and may have known some of the other parties, but don't now remember.

236 To the said third interrogatory, as follows: Are you acquainted with the history of the title to the premises in question in this cause? If so, give a detailed statement thereof, and particularly of the claims, and of the efforts to establish the claims of Harrison Johnson thereto under the preëmption laws; he answering, says:

I knew the premises at the time Johnson occupied them as a preëmption. He settled thereon, and built a dwelling and made other substantial improvements. He afterwards proved up his preëmption; but at a subsequent day his location by preëmption was set aside, and the land was advertised for sale at the Omaha land office. At this time I became better acquainted with the title of the lands. He, Johnson, owed several

persons considerable sums of money, and among others C. E. Stone, of Council Bluffs, Iowa, whose claim was then in judgment, and John B. Beers, of the same place, whose claim was secured by mortgage on a part of said land, and Easley and Willingham, whose claim was
237 also secured by mortgage on another portion of said land. I was then a resident of Nebraska, and C. E. Stone aforesaid, being a non-resident, employed me to look into the title and all matters in controversy, and to act as his agent in that behalf. In this way I became acquainted with the title and Johnson's claim thereto. After I began to act for Stone Johnson made no effort to have his preëmption reinstated, but rather labored to have the land come to public sale; and and the sale accordingly took place, at which he bid in, at the minimum price and in the name of his mother, one eighty, and John H. Kellom bid in the other eighty, at the minimum price, in his own name, since which time Johnson has lived on his eighty, and the Kellom eighty has been subdivided and conveyed to many parties, creditors of Johnson, and in pursuance of an agreement previously made and signed by perhaps nearly all the creditors, except Easley and Willingham and those representing the Beers claim.

To said fourth interrogatory, as follows: Are you acquainted with the facts, circumstances, and negotiations between said Johnson and
238 his creditors, or any of them, which led to the making of an agreement on the 18 of August, 1861, touching said lands; if so, detail the same fully and at large, and particularly declare your interest therein and connection therewith; he, answering, says:

I think I am so acquainted. The land in controversy had been settled on and preëmpted by Johnson under the act of Sept. 4, 1841. Subsequently the location by preëmption was vacated, and the land was advertised for sale by the U. S. Land Office, at the Omaha land office. The day of sale was near at hand. C. E. Stone had reduced his claim to judgment against Harrison Johnson, in the courts of Nebraska, and claimed that his judgment was a lien against Harrison Johnson's interest in the land, and planned to attend the sale and bid in the land if possible. On the other hand, Harrison Johnson planned to have a part of the land pay his indebtedness, and the balance secured for himself. On the day of sale, I think it was, but before the land was offered, he proposed to his creditors, many of whom were attending the
239 sale, to have the land offered in two parcels, he to purchase one eighty at minimum price, and they to bid in the other eighty at minimum price, and divide the same in proportion to their respective claims. C. E. Stone was present in person at the place of sale, and, with 8 or 10 other creditors, entertained the proposition; and, to afford time for negotiations, the sale was held open by the officers of the land office. A form of agreement was then drawn up by a Mr. Seeley, attorney for Johnson, which, after some modifications and additions, suggested by C. E. Stone, was signed by Johnson and 8 or 10 of his creditors. The persons representing the Beers and Easley and Willingham claims against Johnson did not sign the agreement. This agreement was dated on or about August 18, 1860. By its terms myself and the others were appointed to audit and allow claims due from Johnson to his several creditors. At the sale, Johnson bid off one eighty in the name of his mother, Sarah A. Johnson, and John H. Kellom bid off the other eighty. Both purchases were at the minimum price.

To said fifth interrogatory, as follows: Set forth at length the
240 terms, and contents, and the parties to said agreement; he, answering, says:

The agreement provided that Johnson should bid off one eighty at minimum price, and Kellom the other at same price. Johnson's eighty was to be purchased free of debt, and Kellom's eighty was to be divided among the creditors of Johnson. Myself and the two others named as commissioners were to first estimate the amounts due the creditors, by adding to the principal of each debt interest at the rate of ten per cent. per annum. This done, Kellom was to convey to each creditor an amount of land equal to his proportion of the aggregate debt. If the preëmption was ever reinstated or the proposed sale vacated, then the judgment of Stone was to remain unimpaired by the agreement. If any creditor failed to come into the arraugement, then the portions due them was to pass to Johnson. The parties to this agreement were Johnson on one side, and 8 or 10 creditors of Johnson on the other side. I now recall the names of Dr. Monell, H. Nuckals, Reuben Gaylord, John McCormick, C. H. Downs, E. Conant, & W'm Johnson, F.
241 Gridley & Co., Cha's B. Smith, and C. E. Stone, as creditors who signed it, either for themselves, or as agents for other parties who were creditors; neither the representatives of Beers nor the parties acting for Easley and Willingham signed it. They refused, because, as I understood, the agreement would invalidate their prior mortgage liens on the land.

To said sixth interrogatory, as follows: Where last did you see the same; what was done with the same; what, if anything, was said by any, and what person said, relative to the disposition thereof? he, answering, says:

The agreement after its execution was placed in the hands of myself and the other commissioners. We then made the estimate of amounts due each creditor, and in next place had an appraisement and partition of the eighty bid off by Kellom, and Kellom then made his conveyances accordingly. At a meeting of the creditors at or about the closing up of the transaction, I produced the original agreement and other papers pertaining to the business, and laid them on a counter in a store
242 in Omaha, where the meeting was held. Dr. Monell, in my hearing, suggested that the agreement should be so disposed of that no one of the parties to it should know what had become of it, and my recollection now is that when I left the store the agreement and other papers were yet on the counter, and that Dr. Monell and two or three others remained in the store. This is the last time I ever saw the original agreement. The above suggestion of Monell in regard to the suppression of the agreement was made to me, and may not have been overheard by any one else. My recollection now is that I had previously taken a copy of the agreement for C. E. Stone, but am not positive that I have not seen the original since I left it on the counter as above stated.

To said seventh interrogatory, as follows: What was done to carry said agreement into effect? he, answering, says:

Johnson bid off one eighty in name of his mother, Sarah A. Johnson. Kellom bid off the other eighty in his own name, both bids at minimum price. The commission estimated amounts of all claims
243 of creditors handed in. An appraisement and partition of the land (Kellom's eighty) was effected, and conveyances made accordingly. All creditors, except one, signing the agreement came in and received their portion of the land. The claims of Easley and Willingham, and of Beers and of Smith, were considered in the division of the land. The original agreement was left by me in hands of Monell, and others, parties to it, as stated in my last answer.

To said eighth interrogatory, as follows: State whether or not all the creditors signing said agreement came in under the same; if you answer that any did not, give the name of such creditor and what by him by the other creditors and by the arbitrators was done in respect thereof, he, answering, says:

Only one creditor signing the same failed to come in under the same; his name was Cha's B. Smith. At least this is my recollection. The arbitrators required further proof of his claim. He failed to produce it, and it was neither allowed nor paid out of the claims.

244 Last interrogatory, as follows: Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set it forth fully and at large in your answer; he, answering, says:

My understanding was, that Johnson at first wanted all of the creditors, including his mortgagees, to come in and take a portion of the premises in controversy, and leave the balance to him, discharged of all debts and liens. But when these mortgagees (Easley, Willingham, and executors of Beers) failed or refused to come in, then, that he was desirous of cutting them off entirely, if possible. But because it was a disputed question whether he and the other creditors could do this, he finally had the stipulation or understanding in relation to his taking the portion of the Kellom 80 falling to creditors not coming in under the agreement, to enable him to effect settlement privately with such cred-

245 itors. The names and claims of the creditors signing the agreement was as follows:

G. C. Monell,	am't claim, with 10 p'r c't int						$765 16
H. Nuckols,	"	"	"	"	"	"	1,390 35
R. Gaylord,	"	"	"	"	"	"	1,137 45
John McCormick & Co.,	"	"	"	"	"	"	491 64
" " "	"	"	"	"	"	"	225 18
E. C. Stone,	"	"	"	"	"	"	1,369 87
Ezra Conant and W'm Johnson,	"	"	"	"	"	"	175 42
C. H. Downs,	"	"	"	"	"	"	127 35
" "	"	"	"	"	"	"	458 43
" "	"	"	"	"	"	"	400 39
F. Gridley & Co.,	"	"	"	"	"	"	1,466 66
Cha's B. Smith,	"	"	"	"	"	"	1,013 00

The commissioners were not satisfied with the claim of Cha's B. Smith, as presented, and accordingly required of him additional proof. This he failed to produce, and his claim was neither allowed nor paid. I ought, perhaps, to state that Kellom in one or more cases did not convey directly to the creditors, but to a person named by the creditor.

JOB W. DAMON.

246 OCT. 27, '68.

And on the 27th day of Oct., 1868, and at the same place, J. P. CASADY, the other of the witnesses named in said commission, was by me first duly sworn, and by me examined, and to said first interrogatory, as follows:

1st int. What is your name, age, occupation, and place of residence?

To said 1st interrogatory he, answering, says: My name is J. P. Casady; age, 40 years; occupation, land agent; residence, Council Bluffs, Iowa.

To said second interrogatory, as follows: 2nd int. Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either, and which of them; if so, how long have you known each of them, respectively, or such of them as you do know?

To said 2nd interrogatory he, answering, says: I knew John H. Kellom for about 4 or 5 years, during the time he resided in Douglas County, Nebraska. I am not sure that I know the other plaintiffs. I am acquainted with the def'ts James S. Easley and W. W. Willingham; have known them since 1854.

247 To said third interrogatory, as follows: 3rd int. Are you acquainted with the history of the title to the premises in question in the cause? if so, give a detailed statement thereof.

To said 3rd interrogatory he, answering, says: The history of the title to the said premises, as far as I know of it, is this: Soon after lands in Nebraska were open to settlement, say in 1855, Harrison Johnson claimed 160 acres under the preëmption act of September 4th, 1841; the lands in question in this suit are a part of the same. He built a good farm-house, barn, and other out-houses on the land, and opened up a good farm. He has lived on the land thus preëmpted ever since, with his family, including his wife and several children, and a part of the time his mother. In the spring of 1857 he proved up his preëmption right, at the Omaha land office, and entered the land under said act. A part of the land had been claimed by claim title by several persons, and a part was claimed by the "Omaha City Company." Some of the persons applied to the commission to have Johnson's entry set
248 aside, as conflicting with their title. Accordingly, a reinvestigation of his right was had at the Omaha land office, which resulted in the approval of the entry by the officers of that and the General Land Office. He (Johnson) bought out several of the parties who claimed adversely to him giving to some notes and to others money, borrowed of others. The most of the money he borrowed of Easley and Willingham, and of John B. Beers, to whom he gave mortgages on the land after his entry was approved. After this, complaints against his entry were renewed, and a second reinvestigation ordered. The local land office again held in his favor, but although I kept track of the proceedings, being the agent of Easley and Willingham, and also interested in the Beers claim, I never could understand or learn on what grounds the preëmption entry was finally vacated, except as I heard it from others. After this the land was offered for sale at public auction by the Government, and bid off, one-half by John H. Kellom, and the other by Johnson.

To said fourth interrogatory, as follows: 4th int. State whether
249 or not you had any connection with the transaction leading to the agreement between said Johnson and his creditors, or certain thereof, made in August, 1861, touching said lands. If yea, set forth at large, and all that you know, and all that others with your knowledge did in that behalf.

To said 4th interrogatory he, answering, says: The first I knew of these matters, I was asked to go to Omaha, in August, 1861, and attend a meeting of Johnson's creditors, to consider some plan which had been proposed for paying off his debts with the land, or a part of it. I accordingly attended the meeting, representing Easley and Willingham. The meeting was protracted, and everything connected with the matter discussed at length. It was apparent from the discussion, and from the conduct of some of the creditors, that the prior mortgage claims of Easley

and Willingham, and of John B. Beers, were to be ignored, or at least not properly considered. I think a contract was drawn up, but it ignored the prior rights of the creditors whom I represented, and
250 thereupon I left the meeting, refusing to sign the contract, and I had nothing further to do with the contract, or with the meeting. I think the contract was not yet signed by any one when I left the meeting. I cannot now state the provisions of the contract as I then saw and understood it.

To said fifth interrogatory, as follows: 5th int. Set forth the terms and contents of said agreement.

To said fifth interrogatory he, answering, says: In my answer to the fourth interrogatory I have set forth the terms and contents of said agreement so far as my knowledge extends.

To said last interrogatory, as follows: Last int. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

To the said last interrogatory he, answering, says: I know nothing further than what has been already stated touching the rights of said parties.

J. P. CASADY.

251 THE STATE OF IOWA, *Pottawattamie County:*

I, L. W. Ross, commissioner in the annexed commission named, hereby certify that, on the 24th day of Oct., 1868, at my office in Council Bluffs, in said county, C. E. Stone, one of the witnesses named in the annexed commission, appeared before me, and was by me first duly sworn as a witness in the foregoing-entitled cause, to testify the truth, the whole truth, and nothing but the truth, and that I afterwards examined him on his said oath, propounding to him the interrogatories annexed to said commission to be asked him, and that I reduced his answers thereto to writing, as set forth in the foregoing prayer, and that I afterwards read the same over to him in his hearing, and that he then and there signed the same, as aforesaid, in my presence.

And on the 26th of Oct., 1868, at the same place, Job W. Damon, another of the persons named in said commission as a witness, appeared before me, and was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the foregoing-entitled cause,
252 and that I afterwards examined him on his said oath, propounding to him the interrogatories annexed to said commission to be propounded to him, and I reduced his answering thereto to writing in his presence, and in words and figures, as shown in the foregoing pages, and that I afterwards read the same over to him in his hearing, and that he then and there signed the same in my presence.

And on the 27th day of Oct., 1868, at the same place, J. P. Casady, another of the persons named in said commission as a witness, appeared before me, and was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the foregoing-entitled cause, and that I afterwards examined him on his said oath, propounding to him the interrogatories annexed to said commission to be asked him, and that J. N. Casady, a disinterested person, then and there reduced said interrogatories and his answers thereto to writing in his and my presence,

and that I afterwards read the same over to him in his hearing, and that he then and there signed the same in my presence as aforesaid.

Witness my signature this 30th day of Oct., 1868.

L. W. ROSS, *Commissioner.*

253 *Dedimus potestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Nebraska, ss:

To L. W. Ross, esq., Council Bluffs, Iowa, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Calvin E. Stone, Job W. Damon, and Jefferson P. Casady, on their corporal oaths as witnesses, in a cause depending in the circuit court of the United States for the district of Nebraska, wherein John H. Kellom et al. are plaintiffs, and James S. Easley et al. are defendants on the part of said defendants, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that, at certain days and places appointed by you for that purpose, you do cause the said Calvin E. Stone, Job. W. Damon, and Jefferson P. Casady to come before you, and then and there examine them on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying
254 notice and interrogatories, and this commission, under your seal, sealed up and indorsed with the names of the parties litigant, and the word "deposition" on the cover thereof, into the said circuit court, at Omaha, Nebraska, to the clerk thereof, with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighteenth day of August, A. D. 1868, and in the 93 year of the independence of the United States of America.

Attest:

[L. S.] WATSON B. SMITH,
Clerk.

(Endorsements on said dedimus potestatem:) No. 55. Circuit court of the United States, district of Nebraska. John H. Kellom et al. vs. James S. Easley et al. Dedimus potestatem.

255 Interrogatories to be propounded to witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, issued out of the United States circuit court for the district of Nebraska, in a certain cause depending therein between John H. Kellom, George Vail, James G. Chapman, and Harrison Johnson, complainants, & James S. Easley and William W. Willingham, defendants, to be read on the hearing of the said cause on behalf of the said defendants.

Interrogatories to be proposed to Calvin E. Stone.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants, any or either, & which of them? If so, how long have you known them, or such of them as you do know?

Third interrogatory. Are you acquainted with the history of the title

to the premises in question in this cause? If so, give a detailed
256 statement thereof, and particularly of the claim, and of the efforts to establish the claim, of Harrison Johnson thereto under the preemption laws.

Fourth interrogatory. Are you acquainted with the facts, circumstances, and negotiations between said Johnson and his creditors, or any of them, which led to the making of an agreement on the 18 of August, 1861, touching said lands? If so, detail the same fully and at large.

Fifth interrogatory. State your means of knowledge of the contents of the said agreement, and state the contents thereof fully and at large.

Sixth interrogatory. Do you know; if so, state where said agreement is; and if you do not know, state when you last saw the same, and, so far as you are able, what has become of the same.

Seventh interrogatory. What, if anything, was done to carry the said agreement into execution?

Eighth interrogatory. State whether or not said Johnson made any, &, if so, what demands upon the persons carrying said agree-
257 ment into effect? Detail the circumstances thereof, how the said demands were met, and what steps, if any, were taken to enforce and to resist the same.

Ninth interrogatory. State whether or not all the creditors of said Johnson who signed said agreement came in under the same; if any did not, who did not. State fuliy the facts and circumstances relative thereto.

Tenth interrogatory. State whether or not any copy of said agreement was by any party or parties taken thereof; if so, when and by whom, & for what purpose.

Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

258 Interrogatories to be propounded to Job W. Damon.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants, in the title of these interrogatories named, any & either, and which of them, and how long have you known them, respectively, or such of them as you do know?

Third interrogatory. Are you acquainted with the history of the title to the premises in question in this cause? If so, give a detailed statement thereof, and particularly of the claims, and of the efforts to establish the claims, of Harrison Johnson thereto under the preëmption laws.

Fourth interrogatory. Are you acquainted with the facts, circumstances, and negotiations between said Johnson and his creditors, or any of them, which led to the making of an agreement on the 18 of August, 1861, touching said lands? If so, detail the same fully and at large, and particularly declare your interest therein and connection therewith.

259 Fifth interrogatory. Set forth at length the terms and contents and parties to said agreement.

Sixth interrogatory. Where last did you see the same, what was done with the same, and what, if anything, was by any and what person said relative to the disposition thereof?

Seventh interrogatory. What was done to carry said agreement into effect?

Eighth interrogatory. State whether or not all the creditors signing said agreement came in under the same. If you answer that any did not, give the name of such creditor and what by him, by the other creditors, & by the arbitrators, was done in respect thereof.

Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set it forth fully and at large in your answer.

260 Interrogatories to be propounded to Jefferson P. Casady.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the parties, complainants and defendants, in the title to these interrogatories named, any or either, and which of them; if so, how long have you known them respectively, or such of them as you do know?

Third interrogatory. Are you acquainted with the history of the title to the premises in question in this cause? If so, give a detailed statement thereof.

Fourth interrogatory. State whether or not you had any connection with the transaction leading to the agreement between said Johnson and his creditors, or certain thereof, made in August, 1861, touching said lands? If yea, set the same forth at large, and all that you and all that others with your knowledge did in that behalf.

Fifth interrogatory. Set forth the terms and contents of said agreement.

261 Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

J. M. WOOLWORTH,
Sol. for Def'ts.

On which said paper appears the following endorsements, in words and figures following, to wit:

No. 55. U. S. circuit court. John H. Kellom et al. vs. James S. Easley et al. Interrogatories. Filed July 25, 1868. Watson B. Smith, clerk. Filed & opened November 19, 1868. Watson B. Smith, clerk.

And thereupon, afterwards, to wit, on the 5th day of May, A. D. 1870, the following order was entered and appears of record in said cause, in words and figures following, to wit:

262 *Bill of review.*

JOHN H. KELLOM, HARRISON JOHNSON, JAMES G. CHAPMAN, and GEORGE VAIL,
vs.
JAMES S. EASLEY AND WILLIAM W. WILLINGHAM.

This cause having come on to be heard at the adjourned term of this

court, February 9th, 1870, upon the pleadings and proofs filed therein, and having then been argued by the counsel of the respective parties, plaintiffs and defendants, and the court wishing therefore further time to consider the matter, took the same under advisement; and the court having reviewed and considered the matter, and being fully advised in the premises, do find as in the opinion at length of the court filed in the cause appears.

It is therefore ordered, adjudged, and decreed that the said decree heretofore rendered in the case, to wit, on the 12th day of July, 1867, upon the bill of complaint, answer, replication, and proofs filed therein, and all proceedings had thereon (wherein the said James S. Easley and W. W. Willingham are plaintiffs, and the said John H. Kellom, Harrison Johnson, James M. Chapman, and George Vail, impleaded with Sarah Johnson, are defendants) be, and the same is hereby, reviewed and set aside.

And it is further ordered, adjudged, and decreed that the said
263 bill of complaint of *of* the said James S. Easley and William W. Willingham be, and the same is hereby, dismissed, at the costs of the defendants in this bill of review.

And thereupon, in open court, came the said James S. Easley and William W. Willingham, by their counsel, and prayed an appeal from this decree to the Supreme Court of the United States, which is hereby granted.

264 Know all men by these presents, that we, William W. Willingham and James S. Easley, as principals, and J. M. Woolworth, as surety, are held and firmly bound unto John H. Kellom, Harrison Johnson, George Vail, and James G. Chapmam in the penal sum of two hundred and fifty dollars, to the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Dated at Omaha, this 3d day of December, 1870.

Whereas the above bounden William W. Willingham and James S. Easley, in a suit lately depending in the United States circuit court for the district of Nebraska, prayed an appeal from a decree rendered by said court in said suit against them as plaintiffs in the original bill, and defendants in the bill of review filed in said cause, and in favor of said Kellom, Johnson, Chapman, and Vail, defendants in said original bill, and plaintiffs in said bill of review, and have carried their said appeal to the Supreme Court of the United States:

Now, therefore, the condition of the above obligation is such, that if the above bounden William W. Willingham and James S. Easley shall prosecute their said appeal to effect, and pay all costs, if they fail to make this their appeal good, then this obligation shall be void; otherwise of force.

WILLIAM W. WILLINGHAM.
JAMES S. EASLEY,
By J. M. WOOLWORTH, *their Att'y.*
JAMES M. WOOLWORTH, *Surety.*

265 UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing are

true and faithful transcripts from the records of said court, and of the bond filed in my office in the foregoing case, and the whole thereof.

Witness my hand and the seal of said court, at Omaha, this 3rd day of December, A. D. 1870.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsement on cover:) No. 359. James S. Easley and William W. Willingham, appellants, vs. John H. Kellom, Harrison Johnson, James G. Chapman, and George Vail. Nebraska C. C. U. S. Filed 8th December, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 157.

JAMES S. EASLEY AND WILLIAM W. WILLINGHAM, APPELLANTS,

vs.

JOHN H. KELLOM, HARRISON JOHNSON, JAMES G. CHAPMAN, AND GEORGE VAIL.

CERTIORARI AND RETURN.

FILED FEBRUARY 12, 1872.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the district of Nebraska, greeting:

Whereas, in a certain suit in said circuit court between James S. Easley and William W. Willingham, complainants, and John H. Kellom, Harrison Johnson, et al., defendants, which suit was removed to the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That the decree of the circuit court, as the same appears on pages 38 and 39 of the book does not give the description of the premises whereon the said decree should operate; whereas the decree of said court,
2 as rendered, does contain such description."

You, therefore, are hereby commanded that, searching the records and proceedings in said cause, you certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, A. D. 1871.

D. W. MIDDLETON,
Clerk Sup. Court U. S.

Issued 3d Feb'y '72.

(Indorsed:) No. 157. Sup. Court U. S. Dec. term, 1871. Easley et al. vs. Kellom et al. Certiorari.

3 UNITED STATES OF AMERICA,
District of Nebraska, ss:

To the Honorable the Chief Justices and Associate Justices of the Supreme Court of the United States, greeting:

In answer and return to the certain writ of certiorari issued out of the Supreme Court of the United States and under the seal thereof, bearing date the 3 day of February, 1872, which is hereto annexed in pursuance to an order of the circuit court in the said writ mentioned, it is hereby certified that, upon an examination of the record and proceedings in the certain cause in the said writ entitled, it doth appear that an omission hath occurred in the transcript of the proceedings of said court as transmitted to your honors, in this, that from the foot of the decree, appearing at folios 113 to 117 inclusive, of the written transcript, and at pages 38 and 39 of the printed transcript, there have been omitted the following words, that is to say:

"The undivided one-half of the southeast quarter of the northeast quarter of section twenty-one, (21,) township fifteen, (15,) range thirteen (13) east of the sixth (6th) principal meridian, being lots four, (4,) five, (5,) and six, (6,) and one hundred and seventy-five feet off of the west side of lot three in the capitol addition to the city of Omaha, in the State of Nebraska." A copy of which decree at large is hereto annexed.

In witness whereof I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, have hereunto set
4 my hand and the seal of the said circuit court this eighth day of February, A. D. 1872.

[SEAL.] WATSON B. SMITH, *Clerk.*

5 At a circuit court of the United States for the district of Nebraska, held at the city of Omaha, in said district on the 8th day of February, 1872—
Present, the Honorable Elmer S. Dundy, judge.

JAMES S. EASLEY ET AL.
v.
JOHN H. KELLOM ET AL.

A writ of certiorari, issued out of the Supreme Court of the United States and to the judges of this court directed, in the above-entitled cause, having been presented herein, and the record in the said cause having been examined, whereby it appears that there is diminution in the record as transmitted to the said Supreme Court in the particular in the said writ mentioned.

On motion of J. M. Woolworth, of counsel for the said appellants, it is ordered that the clerk of this court certify the matter so omitted to the said Supreme Court, as in said writ is required.

UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the United States circuit court for said district do certify that the foregoing is a true & faithful copy and transcript of an order remaining of record in my office.

Witness my hand & the seal of said court this 8th day of February, 1872.

[SEAL.] WATSON B. SMITH, *Clerk.*

6 In the circuit court of the United States for the district of Nebraska. May term, 1867.

Present, Hon. James M. Love, judge.

FRIDAY, *July 12th*, 1867.

WILLIAM W. WILLINGHAM AND JAMES S. Easley
vs.
HARRISON JOHNSON AND MINERVA, HIS WIFE, John H. Kellom, George Vail, James G. Chapman, impleaded with Sarah A. Johnson.
No. 53.

This cause came on to be heard upon the pleadings, proofs, and exhibits filed herein, and was argued by Mr. Woolworth, of counsel for complainants, and Mr. Gantt, of counsel for defendants, and the court finds that the said Harrison Johnson is indebted to complainants upon the mortgage-note alleged, in the sum of twelve thousand two hundred and seventy-seven dollars and eighty cents, and the conveyance by him to James D. Test, alleged in said bill, was as a security for, and operated as a mortgage of, the premises therein mentioned; that, on the 18th day of August, 1860, said defendant Kellom purchased from the United States a certain portion of said premises, hereinafter particularly described, in trust for such creditors of said Johnson as should take parts
7 thereof, proportioned to the amount of their respective debts against him, in satisfaction of said debts, and for said Johnson, as

to such parts thereof, proportioned to the amount of the debts of any and all creditors who should not do so.

That said Johnson is entitled to one undivided half of said premises under the trust aforesaid and said defendants now hold the same in trust for him charged with the lien of the said complainants' said mortgage.

It is therefore ordered, adjudged, and decreed that Llewellyn Gwynn, esquire, master of this court, sell the said premises, after giving four weeks' notice of time and place of such sale in a newspaper of general circulation, in the county of Douglas, in the State of Nebraska; that such sale be held in said county and that the parties to this suit or any of them may become the purchasers at such sale of said premises or any part thereof. And it is further ordered, adjudged, and decreed, that the said master, after retaining his costs, disbursements, and commissions arising on said sale, out of the proceeds arising thereon, pay to the solicitor for said complainants, the costs of this suit to be taxed, and out of the sum remaining in his hands thereafter, he pay to said complainants or their solicitors the sum so as aforesaid found to be due them, to wit, the sum of twelve thousand two hundred and seventy-seven dollars and eighty-cents, or as much thereof as the said moneys will pay of the same, and bring the balance, if any remaining, into court to abide its further order in premises; and if the proceeds shall be insufficient to pay the said several sums, the said master is hereby ordered to report to the court the amount remaining unpaid; and the said master is directed to take receipts of his disbursements, and the several payments so as aforesaid to be made by him, and file the same with his report of sale.

8

And it is further ordered, adjudged, and decreed that said defendants and each and every of them and all persons claiming under them, or either of them, by mortgage, judgment, or conveyance be, and they are forever, barred and foreclosed of and from all right and equity of redemption in and to the premises and every part thereof.

And it is further ordered, adjudged, and decreed, that if the proceeds arising from said sale shall be sufficient to pay the said costs, expenses, and mortgage-debt, that the complainants may have execution against said Harrison Johnson for such deficiency.

The premises hereby authorized to be sold by decree, and hereinbefore referred to are known and described as follows, that is to say, the undivided one-half of the southeast quarter of the northeast quarter of section twenty-one, (21,) township fifteen, (15,) range thirteen, (13,) and east of the sixth principal meridian, being lots number four, (4,) five, (5,) and (6,) and one hundred and seventy-five feet off of the west side of lot three, (3,) in the capital addition of the city of Omaha in the State of Nebraska.

9

UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing is a true and faithful copy and transcript from the journal of said court of a decree in the case of William W. Willingham and James S. Easley vs. Harrison Johnson et al., and the whole thereof.

Witness my hand and the seal of said court, at Omaha, this eighth day of February, A. D. 1872.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsement on cover:) Sup. Court U. S. 1871, Dec. term. No. 157. James S. Easley & al., app'ts, vs. Jno. H. Kellom et al. Certiorari & return. Filed 12th February, 1872.

Supreme Court of the United States.

No. 157.

JAMES S. EARLEY, ET AL,

APPELLANTS,

v.

JOHN H. KELLOM, ET AL.

Brief and Points for the Appellants.

ON the 25th of June, 1859, Harrison Johnson mortgaged to these appellants the premises here in question to secure a loan of $5,600. He had recently preempted under the Act of September 4, 1841, a quarter section of land, of which the premises were a part. Some time afterwards, his entry was vacated by the Secretary of the Interior, and on the 18th of August, 1860, the quarter section was offered for sale at public auction. Just as the sale was to take place, he entered into a contract with certain of his creditors, the terms of which were as follows: The debts were to be submitted to three persons, to ascertain the amount due, interest being calculated at the rate of 10 per cent. per annum. This was to be done within a limited time, or the creditors in default, were to be debarred of any benefit under the agreement, and Johnson was to re-

ceive such benefits. He was to surrender all his rights in one half of the quarter section, and Kellom was to bid the same off at the sale for the creditors, and the land was to be divided among them in parcels proportionate to the debts found due as above provided, and the creditors were to discharge their debts against Johnson. There are some details in the agreement not necessary here to notice.

At this time, Johnson's indebtedness amounted to about $16,000. Only one half of his creditors signed the agreement. Among those who did was Charles B. Smith, the amount of whose claim was adjusted at $1,013. But some question as to its validity being raised, it was disregarded in making the division of the land.

The land was bid off by Kellom, who deeded to the creditors who signed the agreement, parcels of the land as agreed among themselves—except Smith.

The bill was for foreclosure of the mortgage. The above facts being alleged, a decree was rendered by Mr. District Judge Love in favor of the appellants, holding that the mortgage was a lien upon the equitable interest of Johnson, under the contract, which was held to be one undivided half of the premises bid off by Kellom, and covered by the mortgage. A sale was had under this decree. Thereafter, upon the allegation of error appearing on the face of the decree, and of newly discovered evidence, a bill of review was filed, upon which Mr. Circuit Judge Dillon reversed Judge Love's decree and dismissed the original bill.

The ground upon which Judge Dillon decided was,

that the mortgage was void as made against the provisions of the Act of September 4, 1841.

The 12th and 13th Sections of that Act are as follows:

SECTION 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this Act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the Register and Receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SECTION 13. *And be it further enacted*, That before any person claiming the benefit of this Act shall be allowed to enter such lands, he or she shall make oath before the Receiver or Register of the land district in which the land is situated (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right or pre-emption under this Act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States should enure in whole or in part, to the benefit of any person except himself or herself, and if any person taking such oath

shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

Two questions are presented upon this record.

1. Whether by virtue of the mortgage made to them by Johnson, the appellants have such an interest as can be declared a lien upon the equitable estate to which under his agreement with his creditors he is entitled.

2. Was Johnson entitled to such part of the land bid off by Kellom, as the amount of his debts not represented, bore to his entire indebtedness, which was one half, or only to such part as Smith's debt bore to the indebtedness of those who signed the agreement, which was one-eighth.

First Point.

The provision in the 12th Section, of the Act of September 4, 1841, that "all transfers and assignments of the right, hereby secured, prior to the issuing of the patent, shall be null and void," does not invalidate the mortgage made by Johnson to the appellants.

I. It is matter of history, that throughout the Western States, pre-emptors under this Act have conveyed the lands entered by them, before their patents have issued, and in all of them, immense bodies of the most valuable property is held by such titles. Until Judge Dillon's decision in this case, no doubt was entertained of the validity of such deeds. This Court will not adopt a novel construction of the statute, which will produce incalculable mischief, unless it be the only reasonable one.

Camp. *v.* Smith, 2 Minn, 155.
Dillingham *v.* Fisher, 5 Wis., 475.
Snow *v.* Flaming, 10 Iowa, 318.

II. It is not necessary to decide the point here. Johnson's pre-emption entry having been vacated, and nothing being necessarily claimed here by virtue thereof, it may be laid out of the consideration, and the case regarded as one where a party has improved and occupies a portion of the public land, and has so dealt in respect thereof as to be estopped to deny his title thereto, and afterwards acquires from the Government a valid title.

Thredgill *v.* Pintard, 12 How., 24.
Marshall *v.* Rush, 6 Id., 284.

1. In many of the western States, interests such as Johnson is here considered as having have been regarded as good consideration to support a promise.

Doyle *v.* Knapp, 3 Scam., 337.
Pierson *v.* David, 1 Iowa, 23.
Ipry *v.* Sleppy, 5 Id., 409.

2. And the Statute of Nebraska so provided.

1 Session Laws of Territory, 159.
2 Id., 89 Sec., 37.

III. The provision of the Statute does not relate to such an instrument as the mortgage of the appellants.

1. The terms used are inapt to describe such an instrument. They inhibit an "assignment of the right." This is a mortgage of the land.

2. The terms of the 13th Section are descriptive of this instrument, and did, it appear that Johnson, when proving up, swore falsely, and that the appellants were not bona fide purchasers, would avoid it. The clause in the 12th Section is not to be construed so as to include such instruments as are described by the 13th Section.

Commonwealth *v.* Alger, 7 Cush., 53, 89.
Att'y Gen'l *v.* Detroit, etc., Co., 2 Mich., 136.
The People *v.* Draper, 15 N. Y., 532.
1 Kent's Comm., 162.

Taken together and harmonized, these two provisions should be construed thus: that in the 12th Section, as prohibiting a party who has claimed a tract under the pre-emption law, from

transferring his right to enter to another so that the latter by virtue of the former's residence and improvement, may secure the land, while that in the 13th Section prohibits a conveyance after the entry to a party knowing that the pre-emptor has defrauded the law.

3. This mortgage is not within the mischief.

(1.) On another occasion this Court has declared what it deemed the mischief to be. The same provision is in the Act of 1830. This Court speaking of it, says it was in speculators procuring occupants to seat themselves on choice spots and enter them, and abandon them as soon as the speculation was accomplished.

The Act of 1838, required an oath that no such contract had been made, preliminary to allowing the entry. The policy of Congress is thus disclosed.

Marks *v.* Dickson, 20 How., 501-505.

(2.) But it would be most useless, and most inconvenient to the pre-emptor, to prevent his borrowing money to be used in improving the tract; and yet, such is the effect of the clause, if construed as it was by the Court below.

(3.) It is a just, reasonable and necessary rule of statutory construction, that the general words of a law, are to be restrained, where it is clear

that they were not intended to extend to a particular act, or thing.

Jackson *v.* Collins, 3 Cowen, 87.
Mayor of New York *v.* Lord, 18 Wend., 131.
Brown *v.* Plougher, 14 Peters, 178.

4. This also, appears from legislation on the subject. The Act of 1830, (4 St., 320, Sec. 3) was repealed by that of 1832, (Id., 492) by terms, showing that Congress thought the former Act forbade assignments of the certificates, rather than conveyances of the land.

5. The words "null and void," are to be construed as voidable, as they are in many other cases.

e. g. in the statute of frauds.

Anderson *v.* Roberts, 18 Johnson, 515.
Hone *v.* Woolsey, 2 Ed., Ch., 287.

In the Bankrupt Act.

Young *v.* Bullitin, 4 H. of L. Ca., 682.
Bryan *v.* Child, 5 Exch., 368.
Hughes *v.* Palmer, 16 C. B. N. S., 393.

In a statute conferring jurisdiction.

Prigg *v.* Adams, 2 Salk, 682.

6. The Government alone can take advantage of this provision, which was inserted for its protection. It

does not lie in the mouths of these defendants to raise the objection.

(1.) There is a glaring injustice in denying to these mortgagees, the security upon which they loaned their money, when the mortgagor has acquired a valid title to the premises.

(2.) The creditors of Johnson cannot make the point. These appellants work out their equity through Johnson, whose claim rests on the public sale, the contract made at the time, and the trust thereby created in his favor. It is in virtue thereof, that these creditors are here impleaded.

(3.) And Johnson is estopped to allege it. The estoppel will operate, even if the mortgage was void.

Jackson *v.* Demont, 9 John, 55.
Roorbach *v.* North River, etc., Co., 6 John, Ch. 1469.
Phillpotts *v.* Phillpotts, 10 C. B., 58.
Hull, etc., Co., *v.* Wellsley, 6 H. & N., 36.
Gibbs & Thayer, 6 Cush., 30.
Van Hook *v.* Whitlock, 26 Wend., 43.
Webb *v.* Herne, etc., L. R. 5 Q. B., 642.
In Re Bahia, etc., Co., Id. 3, Id. 584.

Second Point.

The interest which Johnson acquired in the land, under Kellom's purchase and the contract, enured to the benefit of the appellants, inasmuch as they had a mortgage, and also covenants of warranty. No more

inequitable or oppressive case can be presented than this, when parties made a loan relying on the security of the land. If their mortgagor became in any way entitled thereto, then the land will be held to be charged with the debt.

Thredgill *v.* Pintard, 12 How., 24.
Marshall *v.* Bush, 6 Id., 284.
Arnold *v.* Chapman, 2 Iowa, 1.

Third Point.

The undivided half of the premises purchased by Kellom, stand chargeable with the lien of the mortgage of the appellants.

There is no dispute about the facts, except whether the agreement between Johnson and his creditors, entitled him to such part of the premises as any one of his creditors, whether signing the instrument or not, would become entitled to by presenting his claim to the committee, but forfeited by not doing so, or only such part as a creditor signing the agreement forfeited, by not thus presenting his claim.

Johnson shows his debts were without interest, $14,000, on page 16, of the record.

Damon shows that the debts of those who did sign, were about $9,000, interest included at page 79. From which it will appear that about one half of the creditors signed.

Kellom shows what deeds he made, and the consid-

eration therefor, at page 22-24. See also, deeds and map, from page 28 to 34.

1. The circumstances under which the agreement was made, very clearly show that Johnson was to have the land divided among all his creditors, and whatever was awarded to one who declined to come into the arrangement was to go to him, in order to enable him to make adjustments of his debts privately.

See depositions of Stone page 70 and 72.
" " Damon, page 77 and 78.

2. The terms of the contract are shown by Woolworth, page 18 ; Johnson, 17 ; Stone, 70, 74 to 76, and Damon, 76 to 78.

3. The testimony on the other side is very unsatisfactory.

Kellom's want of candor does not commend his testimony to credence, page 22-24; Monell's simple denial of the agreement, is without value, page 26.

The alleged copy produced by Sapp, is not shown to be correct.

To that copy is appended a certificate by Damon, which Sapp admits he wrote.

There was an evident attempt to suppress the contract, on the part of Kellom and Monell.

See deposition of Damon, page 72:

Damon denies making any comparison of a copy with the original, along with Sapp ; page 72, and shows that since the time the creditors closed up the matter, he has not seen the paper ; page 72. So that Sapp is mistaken in supposing they, after that event, made any comparison.

But the decisive fact in the case is, that these parties sought to conceal the instrument, and on the hearing of the original bill, persisted in the attempt, and when a decree is passed against them. for the first time produce it.

4. But if the paper produced is a true copy, we are entitled to Smith's part of the land.

He had a valid debt, it was duly presented, the amount due was computed and ascertained, and to exclude him was a violation of the contract. But whether that were so, or not, if he failed to come forward, by the terms of the contract, Johnson was entitled to his proportion of the land.

J. M. WOOLWORTH,

of Counsel for Appellants.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1871.

JAMES S. EASLEY AND W. W. WILLINGHAM, APPELLANTS,
vs.
JOHN H. KULLOM AND OTHERS, APPELLEES.

No. 157.

BRIEF FOR APPELLEES.

A bill of review brings before the court any "error apparent upon the bill, answer, and other pleadings and decree." (Whiting *vs.* The Bank, &c., 13 Peters 14; 2 Daniels' Ch. Pr., 1576.)

It may also be for newly-discovered evidence. (2 Daniels' Ch. Pr., 1576.)

The newly-discovered evidence in this case consists of a copy of the contract made the basis of the suit, from which it appears that neither in the original bill, nor by the secondary evidence introduced on the original trial, were its contents truly stated.

FIRST POINT.

The agreement set forth in the original bill, (Record 2, 3, 4,) which was to hinder and prevent competition at the public land sale, and which agreement is alleged to have been carried out, was contrary to public policy, and equity will not lend its aid to its enforcement. (McBlair *vs.* Gibbs, 17 Howard, 236; Marshall *vs.* B. & O. Railroad Co., 16 Howard, 334; Thompson *vs.* Davis, 13 John., 112; Coulter *vs.* Roberts, 14 S. & M., 29.)